

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

No. 380. 41.

I. R. MARKRADER, SHERIFF AND KEEPER OF WINTHROP
COUNTY JAIL, VA. APPELLANT.

vs.

H. G. WADLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA.

FILED DECEMBER 29, 1900.

(16,457.)

(16,457.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 678.

I. R. HARKRADER, SHERIFF AND KEEPER OF WYTHE
COUNTY JAIL, VA, APPELLANT,

vs.

H. G. WADLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA.

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1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, } To wit:
Western District of Virginia,

At a circuit court of the United States for the western district of Virginia, continued and held at Abingdon, Virginia, on Tuesday, the 18th day of August, A. D. 1896—present, the Honorable Charles H. Simonton, circuit judge—among other, were the following proceedings, to wit:

2 I. R. HARKRADER, Sheriff and } Ex Parte: H. G. Wadley.
Jailer of Wythe County, Va., } Petition for Writ of Ha-
vs. } beas Corpus.
H. G. WADLEY.

3 *Petition for Writ of Habeas Corpus by H. G. Wadley.*

Paper No. 1. Filed August 18, 1896.

In the Circuit Court of the United States for the Western District of Virginia, at Abingdon, Va., Fourth Circuit.

In the Matter of the Application of H. G. WADLEY for a Writ of *Habeas Corpus*.

To the honorable circuit court of the United States in and for the western district of Virginia, at Abingdon, Va., fourth circuit:

Your petitioner, H. G. Wadley, respectively represents and shows to this honorable court that he is a citizen of the United States of America and a citizen of the State of North Carolina and a resident of the city of Wilmington, in that State; that he is unjustly and unlawfully detained and imprisoned in the county jail of Wythe county, Va., at Wytheville, Va., in the custody of I. R. Harkrader, sheriff of said county, and as such the warden and keeper of said jail, by virtue of a warrant or order of commitment made by the county court of Wythe county, Va., at Wytheville, Va., on Monday, the 10th day of August, 1896, a copy of which order or warrant of commitment is hereto annexed, marked Exhibit "A."

Your petitioner would now show that on a petition filed by him before the Honorable Charles H. Simonton, United States circuit court judge for said fourth circuit, embracing said western district of Virginia, on the 5th of August, 1896, the said honorable judge, Simonton, entered an order on said petition, allowing it to be filed in the equity cause of H. G. Wadley v. Blount & Boynton *et als.* pending in said court, and on said petition, duly verified and sustained by affidavits, the said honorable judge, Simonton, on said 5th day of August, 1896, in accordance to the prayer of said petition, granted an injunction against Robert Savers, the Commonwealth's attorney of Wythe county, Va.; J. A. Walker and C. B. Thomas,

special prosecutors, and the creditors embraced in said petition, together with their counsel, from all further proceedings in said county court of Wythe upon an indictment obtained against the said H. G. Wadley in said county court on the 16th day of May, 1894, and especially from exacting or requiring any bail or any commitment to imprisonment of said H. G. Wadley on said indictment in said county court.

A certified copy of the said petition which was presented to Judge Simonton on the 5th of August, 1896, is herewith filed, marked Exhibit "B," and a certified copy of the said order of Judge Simonton of the 5th of August, 1896, on said petition is likewise herewith filed, marked Exhibit "C."

Your petitioner, H. G. Wadley, would further show that heretofore, to wit, on the 31st of January, 1895, on an injunction theretofore awarded by him to your petitioner in his case of H. G. Wadley *v. Blount & Boynton et als.*, in this court, by the Honorable Nathan Goff, he, by a decree of that date, fully sustained the contention of your petitioner by refusing to dissolve said injunction and continuing it in full force, and by said decree enjoined and prohibited all further prosecution of said indictment in the county court of Wythe county, Va., as shown by copy of the said decree and the opinion of the Honorable Nathan Goff, herewith filed, marked Exhibit "D."

Your petitioner had hoped that after this final decree in the United States circuit court by the Honorable Nathan Goff on said injunction, prohibiting all further prosecution of said indictment, that the order of that honorable court would have been obeyed; but that was a vain conjecture, as the said Robert Sayers, Commonwealth's attorney of Wythe county, Va., and said special prosecutors, J. A. Walker and C. B. Thomas, persisted and continued from term to term or from time to time in calling up said indictment in said county court and asking for a continuance of the said indictment and for the commitment of the said H. G. Wadley to the county jail of Wythe county, and he was bailed with sureties for his appearance before the said county court to appear on

4 Monday, the 10th of August, 1896, being the first day of the August term of the said county court. Your petitioner would now show that notwithstanding the fact that the honorable judge, Simonton, as aforesaid, did on the 5th of August, 1896, enter said order especially forbidding any further order in said case in said court except a mere order of continuance, and although copies of the said order were duly executed on said Commonwealth attorney, Robert Sayers, and on said special prosecutors, J. A. Walker and C. B. Thomas, and all of the creditors named in said petition and upon their counsel of record by the marshal for the western district of Virginia; which order was duly executed on Saturday, the 8th of August, 1896—

Your petitioner, H. G. Wadley, would now show that in flagrant and contemptuous violation of both of the orders named, that of the Honorable Nathan Goff of the 31st of January, 1895, prohibiting all further prosecution of said indictment, and in violation likewise of the said order of the Honorable Charles H. Simonton of

the 5th of August, 1896, upon the calling of the said indictment this day in said county court of Wythe county, Va., the said Commonwealth's attorney and one of the special prosecutors asked for a continuance and stated that they had nothing to do with the question of bail or with the question of the commitment of petitioner, but that that was the duty of the court, and thus indirectly accomplished what the order of Judge Simonton in express words prohibited, for the said Commonwealth's attorney and special prosecutors, instead of asking a compliance by the said county court with the order of Judge Simonton, indirectly asked the court to commit him by saying it was the duty of the court to do so, and thereupon W. E. Fulton, the judge of the county court of Wythe county, Va., in violation of said orders of the United States court, did order the said petitioner, H. G. Wadley, to be committed to the sheriff of Wythe county, to keep and hold him over to answer said indictment, which is now enjoined by the said United States court, and your petitioner is now in the custody of the sheriff of Wythe county, at Wytheville, who is *ex officio* the warden and jailor of said county, and your petitioner is thus deprived of his personal liberty by the said court on its own motion committing petitioner to the custody of the jailor of Wythe county, Va., procured as aforesaid.

Petitioner avers that the said indictment upon which petitioner was committed was illegally and improperly obtained, in violation of petitioner's rights as a citizen of the United States, by the counsel for the said creditors having themselves summoned before the grand jury of the county court of Wythe county, Va., on the 16th of May, 1894, and carrying before the grand jury and reading to them a copy of the deposition of your petitioner, which had been taken of petitioner in an equity suit of Blount & Boynton *et als. vs.* H. G. Wadley *et als.*, and thus indirectly by said record or deposition from the United States court taken in a cause in that court indirectly required petitioner to testify against himself in a criminal case, and upon the mere copy of said deposition of petitioner, illegally taken from the files of the said cause in the United States court and read to said grand jury of Wythe county, petitioner was indicted. A copy of said indictment is fully set forth, with said exhibit, along with the petition filed on the 5th of August, 1896, and is here referred to as a part of this petition.

Petitioner avers that his term of imprisonment, now complained of, began on the 10th day of August, 1896, at 12 o'clock m., and that such imprisonment still continues, and that he is now in the custody of the said sheriff as such jailer at Wytheville, Va.

Your petitioner will now show that his detention and imprisonment as aforesaid is illegal in this, to wit:

First. That this court, by two decrees, that of Judge Goff of 31st of January, 1895, as also by the second order of Judge Simonton of 5th of August, 1896, declares and adjudicates the prior jurisdiction of the said United States court, both of the person of your petitioner and also of the subject-matter of the controversy and of the issues involved in said indictment, and that said prior jurisdic-

tion of the said United States court renders such detention and imprisonment of prisoner by said county court illegal.

5 Second. That, as stated by the Honorable Nathan Goff in his petition filed with his order of the 31st of January, 1895, in the injunction case, the indictment against petitioner in said county court of Wythe county, Va., was obtained against him illegally and in violation of his constitutional rights as a citizen of the United States, by the misuse and abuse of the records of the United States court, in the withdrawal therefrom of a copy of the deposition of petitioner taken in said court in said equity cause and read and used before the said grand jury of said county court of Wythe as the foundation of said indictment.

Wherefore, to be relieved from said unlawful detention and imprisonment, your petitioner, H. G. Wadley, prays that a writ of *habeas corpus*, to be directed to I. R. Harkrader, sheriff of Wythe county, Va., at Wytheville, Va., and keeper of the said jail of the said county, and in whose custody petitioner now is, may issue in his behalf, so that your petitioner, H. G. Wadley, may be forthwith brought before this court, to do, submit to, and receive what the law may direct, and upon the hearing thereof that your honor will discharge petitioner from all further custody or imprisonment, and that he go hence without bail.

H. G. WADLEY, *Petitioner.*

JOSEPH C. WYSOR,
D. F. BAILEY,
BLAIR & BLAIR,
Counsel for Petitioner.

STATE OF VIRGINIA, }
County of Wythe, } *To wit :*

H. G. Wadley, petitioner in the foregoing petition, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and the said statements made are true as he verily believes.

H. G. WADLEY.

Sworn to by the said H. G. Wadley before me and by me subscribed on this the 10th day of August, 1896.

[SEAL.]

ROBERT W. BLAIR,
Notary Public, Wythe County, Va.

6 *Writ of Habeas Corpus on Petition of H. G. Wadley. Filed Aug. 18, 1896.*

UNITED STATES OF AMERICA :

Circuit Court of the United States, Fourth Circuit, Western District of Virginia, at Abingdon, Va.

To I. R. Harkrader, sheriff of Wythe county, Va., and as such jailor of such county :

We command you that the body of H. G. Wadley, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before me, Charles H. Simonton, judge of our circuit court of the United States within and for the said district aforesaid, at Greenville, South Carolina, on the 14th day of August, 1896, to do and receive all and singular those things which the said judge of our said circuit court shall then and there consider of him in this behalf ; and have then there this writ.

Witness the Honorable Charles H. Simonton, judge of the fourth circuit of the United States court, this the 11th day of August, 1896, and in the one hundred and twentieth year of the Independence of the United States of America.

CHARLES H. SIMONTON,
Circuit Judge.

Marshal's Return.

WYTHEVILLE, August 13th, 1896.

Executed the within by delivering a true copy thereof to I. R. Harkrader, sheriff of Wythe county, Virginia, at Wytheville, Va.

GEO. W. LEVI, *U. S. M.*,
Pr I. H. BUFORD, *D. M.*

7 *Writ of Habeas Corpus and Return of Sheriff. Filed August 18, 1896.*

UNITED STATES OF AMERICA :

Circuit Court of the United States, Fourth Circuit, Western District of Virginia, at Abingdon, Va.

To I. R. Harkrader, sheriff of Wythe county, Va., and as such jailor of such county :

We command you that the body of H. G. Wadley, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before me, Chas. H. Simonton, judge of our circuit court of the United States within and for the said district aforesaid, at Greenville, South Carolina, on the 14th day of August, 1896, to do and receive all and singular those things which the said judge of our said circuit court shall then and there consider of him in his behalf ; and have then there this writ.

Witness the Honorable Charles H. Simonton, judge of the fourth circuit of the United States court, this the 11th day of August, 1896, and in the one hundred and twentieth year of the Independence of the United States of America.

CHAS. H. SIMONTON,
Circuit Judge.

To the honorable judge of the United States circuit court for the fourth circuit of the United States :

In the matter of the petition of H. G. Wadley and the writ of *habeas corpus ad subjiciendum* which issued from the clerk's office of the circuit court of the United States for the western district of Virginia on the 11th day of August, 1896, and returnable on the 14th day of August, 1896. in the town of Wytheville, Wythe county, Virginia, this respondent, for answer to the said writ, says that he here produces the body of the said H. G. Wadley, the person named in the said petition for the said writ, in obedience to the command and direction thereof, and for further return and answer to said writ here avers that he detained in his custody the body of said H. G. Wadley under and by virtue of an order of the county court of Wythe county, State of Virginia, entered in the case of The Commonwealth of Virginia vs. said H. G. Wadley on the 10th day of August, 1896, upon an indictment for a felony pending in said court against said Wadley. So much of said order as relates to the custody of said Wadley is here inserted in the words and figures following, to wit :

"And the court, of its own motion, required the prisoner to enter into bond, with security, in the penalty of \$10,000, and until such bond is given he is committed to the custody of the jailer of this county."

And now respondent, having fully answered, prays that said writ may be discharged, and that he may be awarded his costs about his return to the writ aforesaid in this behalf expended ; and, in duty bound, he will ever pray, &c.

I. R. HARKRADER,
Sheriff of Wythe County, Va., and as Such Jailer Thereof.

8

EXHIBIT "A."

Order of Continuance and Commitment.

(Paper No. 2.) Filed Aug. 18th, 1896.

VIRGINIA :

In Wythe County Court, August 10, 1896.

THE COMMONWEALTH	}	Felony.
v.		
H. G. WADLEY.		

This day came The Commonwealth, by her attorney, and James A. Walker and C. B. Thomas, assistant prosecutors, as well as the

accused, in his own proper person, in discharge of his recognizance; whereupon the attorney for the Commonwealth moved the court to continue this cause on the ground that there are documents, books, and papers in the possession of I. C. Fowler, clerk of the circuit court of the United States for the western district of Virginia, at Abingdon, and that there are other documents, papers, and books in the possession of H. B. Maupin, receiver of the said circuit court of the United States, in the chancery cause of Paul Hutchinson, administrator, against the Wytheville Insurance and Banking Company, pending therein, which said papers, books, and documents are material evidence of the Commonwealth in the prosecution of the said indictment against the said H. G. Wadley, and that the Commonwealth cannot safely go to trial without the said papers, books, and documents; that the said J. L. Gleaves, then attorney for the Commonwealth of Virginia for Wythe county aforesaid, at a former term of the circuit court of the United States, applied to the said circuit court for an order directing the said clerk and the receiver to obey any *subpœna duces tecum* issued from the clerk's office of this court, requiring said clerk and said receiver to produce said papers, books, and documents before this court on the trial of this prosecution, and that since said order was entered in the said circuit court of the United States the said J. L. Gleaves, attorney for the Commonwealth aforesaid, procured *subpœna duces tecum* to be regularly issued from the clerk's office of this court for said I. C. Fowler, clerk as aforesaid, residing at Abingdon, Virginia, and H. B. Maupin, receiver as aforesaid, residing in Wythe county, Virginia, requiring them to produce said papers, books, and documents in their possession as aforesaid; which said *subpœnas duces tecum* were duly executed on the said I. C. Fowler, clerk, and the said H. B. Maupin, receiver, but that they refused and declined to obey the same or to produce said papers, books, and documents, because since said order was entered by the United States court and since said *subpœnas duces tecum* were issued and served the accused, H. G. Wadley, had prepared and sworn to a bill asking for an injunction restraining the said I. C. Fowler, clerk, and the said H. B. Maupin, receiver, from obeying any such *subpœna duces tecum*; which bill was presented by counsel for the said H. G. Wadley to the Hon. Nathan Goff, one of the circuit judges of the United States for the fourth circuit, and on the *ex parte* motion of the said Wadley the said judge awarded an injunction restraining the said J. L. Gleaves, attorney for the Commonwealth of Wythe county, Virginia, either by himself or the agreement of others; I. C. Fowler, clerk of the said United States circuit court; H. B. Maupin, receiver as aforesaid, by themselves or by their agents or defendants, from all further proceedings or participation by them or either of them in a prosecution now pending in the county court of Wythe county, in the name of The Commonwealth *v.* H. G. Wadley, for the embezzlement of the assets of the Wytheville Insurance and Banking Company, restraining and enjoining them and all other defendants named in said bill, including their attorneys, clerks, agents, either directly or in-

9 directly, through their own agency or the agency of others, from in any manner using against said H. G. Wadley in any other court, State or Federal, in any other case, civil or criminal, the deposition of the said Wadley taken in another case of Paul Hutchinson, adm'r, v. The Wytheville Insurance and Banking Company, pending — the circuit court of the United States for the western district of Virginia, or any copy thereof or extract therefrom.

And the prayer of said bill is in the following words:

Forasmuch as your orator can have no adequate relief except in this court, and to the end, therefore, that the defendants may, if they can, show why your orator should not have the relief prayed for, and that they may answer to the matters hereinbefore stated and charged, the prayer of your orator is—

That this bill of injunction and for relief be treated as incidental to said suit now pending in your honor's said court at Abingdon; that your honor may grant a writ of injunction, issuing out of and under the seal of this honorable court, restraining and enjoining, under the penalty for a violation hereof, all of the defendants to this bill, including their attorneys, clerks, and agents, either directly or indirectly, through their own agency or through the agency of others, from in any manner using against orator in any other court, State or Federal, in any other case, civil or criminal, the said deposition of your orator aforesaid taken in said suit in equity, or any copy thereof, or the report of Master Commissioner Gray, taken and filed therein, or any copy thereof, or any of the books, papers, records, or correspondence, or any copies thereof or extracts therefrom, of the Wytheville Insurance and Banking Com., in the possession or that came under the control of said Gray, commissioner, or of H. J. Heuser, late receiver, or of H. B. Maupin, present receiver, or of I. C. Fowler, clerk, in said equity suit that was brought in this court by said creditors; that your honor will likewise enjoin each and all of said defendants, creditors, who are now parties by the decrees of this court in said suit in equity now pending in this court, whether they are parties to the original bill or intervenors by petition or are plaintiffs in the amended, supplemental, and cross bill, or whose claims have been allowed by or presented to the master commissioner, Gray, for allowance, together with all their attorneys, clerks, or agents, either through their own agency or acts or through the agency or acts of others, and also the said J. L. Gleaves, the Commonwealth's attorney of Wythe county, Virginia, either by himself or by the agency of others, and said commissioner, Gray; receivers, Heuser and Maupin, and said clerk, Fowler, by themselves or their agents or deputies, from all further prosecution of or participation by them or by either of them in the criminal procedure now pending in the county court of Wythe county, Virginia, in the name of The Commonwealth of Virginia vs. H. G. Wadley, upon an indictment for embezzlement of the assets of the Wytheville Insurance & Banking Co., the said creditors having already submitted themselves and their claims affected by or involved in said criminal procedure, by their bill in equity, to

the prior jurisdiction of this court; that your honor, upon a final hearing of this cause, will punish the parties involved for their unjust and unlawful misuse of the records of this court in said equity suit, for the promotion and prosecution by said creditors of said criminal procedure against your orator, now pending in the said county court of Wythe county, Virginia, put on foot by said creditors and their attorneys.

Copy.

Attest:

I. C. FOWLER, *Clerk.*

10 The restraining order is in the following words:

PAUL HUTCHINSON, Adm'r of Chas. Hutch-	}	On Original Bill in Equity.
inson, Dec'd, <i>et al.</i> ,		
<i>vs.</i>		
THE WYTHEVILLE INSURANCE & BANKING	}	On Amended, Supple- mental, and Cross Bill in said Suit.
COMPANY,		
and		
BLOUNT & BOYNTON <i>et als.</i>	}	
<i>vs.</i>		
H. G. WADLEY <i>et als.</i>		

This day came H. G. Wadley, one of the defendants in the above proceedings in equity now pending in the above-named court, and he presented his bill for an injunction in his name against said Blount and Boynton *et als.*, and this said bill being duly sworn to by H. G. Wadley and fully supported by the affidavits of J. H. Gibboney, H. J. Heuser, and J. B. Barrett, Jr., the cause came on this day to be heard upon said bill for injunction, and upon all the exhibits filed thereto, and upon a transcript of the record of said original bill and said amended, supplemental, and cross bill above named, and, upon reading said bill and affidavits and the said exhibits and transcripts, the court is of opinion that the equity jurisdiction of the United States court above named first attached to both the persons and the subject-matter involved in said suits in equity, and that it is improper that the records of the pleadings, proofs, books, and papers filed in and parts of said equity suits now in litigation and pending unadjudicated in this court between said parties, or copies thereof, should be withdrawn therefrom and used by any one in any criminal or other proceeding, in any other court, against the said party to any of said suits, in regard to any matters in issue in said suits in equity, until the same have been fully adjudicated by this court; and it appearing to this court from said bill for injunction that such has been done and is now threatened by parties to said suits in equity for use in a criminal proceeding just begun by them in the county court of Wythe county, Virginia, against said H. G. Wadley, for matters involved in and growing out of said suits in equity which were first instituted and are still pending in litigation and undetermined in this court, it is ordered that an injunction be awarded to said H. G. Wadley according to the prayer

of his bill; and it appearing to the court that the defendants in said bill are quite numerous, it is further ordered that service of this order on their counsel shall be equivalent to personal service on them.

But before this injunction shall take effect the said H. G. Wadley will execute a bond before the clerk of the court in the penalty of \$10,000.00, conditioned according to law, with N. L. Wadley as his surety, who is approved as such surety, proof of her solvency being now made.

H. GOFF,
Circuit Judge.

June 8th, 1894.

To I. C. Fowler, clerk United States circuit court, Abingdon, Va.

11 And thereupon, on motion of the attorney for the Commonwealth, the case is continued until the next term.

And the court, of its own motion, required the prisoner to enter into a bond, with security, in the penalty of \$10,000.00, and until such bond is given he is committed to the custody of the jailer of this county.

Enter.

WM. E. FULTON.

A copy.

Teste: WM. B. FOSTER, *Clerk.*

12 *Denial & Reply of Wadley to Sheriff's Return.*

Filed Aug. 18, 1896.

In the Circuit Court of the United States for the Western District of Virginia, at Abingdon, Fourth Circuit.

H. G. WADLEY

v.

I. R. HARKRADER, Sheriff of Wythe
County, Va.

} Answer and Denial of Return.

The petitioner, H. G. Wadley, comes and says that for aught contained in the said return of I. R. Harkrader, sheriff of Wythe county, Virginia, for his petition for *habeas corpus* that petitioner is entitled to his discharge, because he denies, as contained in said return, said county court of Wythe county, Virginia, had any jurisdiction of said petitioner or the subject-matter of said indictment at the time it was found or now has such jurisdiction. Petitioner denies the validity of the order of commitment of said court of petitioner to said sheriff of 10th August, 1896, relied on in said return, and says that commitment is void, because said court had no jurisdiction to enter it, and also because the indictment upon which the petitioner was so committed was obtained in violation of the Constitution of the United States by the illegal and unconstitutional use of petitioner's deposition, withdrawn from the files of this court and car-

ried before and read to the said grand jury which found the said indictment, and hence said custody is unlawful, and petitioner is deprived illegally of his personal liberty.

Demurrer.

H. G. WADLEY

v.

I. R. HARKRADER, Sheriff of Wythe County, Va. }

And now comes H. G. Wadley in his own proper person and by his counsel, Blair & Blair, and, having heard the return of said sheriff read in answer to the writ of *habeas corpus* awarded in this cause, he says that the said return and matters contained therein and set forth are not sufficient in law, and that the said return shows no legal ground for petitioner's detention by said sheriff, and that it is not sufficient answer to the matters of law and fact contained in said petition and exhibits; and this he is ready to verify. Wherefore, for want of any sufficient return in this behalf, said H. G. Wadley, the petitioner, prays judgment that the said return be held insufficient; that an order be entered discharging petitioner from the custody of the said sheriff.

H. G. WADLEY, *Petitioner.*

We, F. S. Blair and J. C. Blair, attorneys, practicing in the United States court, fourth circuit, do hereby certify that in our opinion the foregoing demurrer to said return of I. R. Harkrader, sheriff of Wythe county, Va., is proper, and said demurrer should be sustained.

F. S. BLAIR &
J. C. BLAIR.

UNITED STATES OF AMERICA, }
Western District of Virginia, Wythe County. }

I, Robert W. Blair, a notary public in and for said Wythe county, Virginia, do hereby certify that this day personally appeared before me, in my said county, H. G. Wadley, who made oath that the facts contained in the foregoing demurrer, and also in his answer and denial of the sheriff's return, are true, to the best of his knowledge, information, and belief.

Given under my hand and seal this 12th day of August, 1896.

H. G. WADLEY, *Petitioner.*

Sworn to before me, at Wytheville, Va., by H. G. Wadley on this 12th day of Aug., 1896.

ROBT W. BLAIR,
Notary Public.

Final Order of Discharge, with Return.

Paper No. 8. Filed August 18, 1896.

In the Circuit Court of the United States for the Western District of Virginia, at Abingdon, Fourth Circuit.

In the Matter of the Application of H. G. WADLEY for a Writ of *Habeas Corpus*.

On this the 14th day of August, 1896, came H. G. Wadley, the petitioner, by his counsel, Blair & Blair, and this cause coming on to be heard upon the petition for a writ of *habeas corpus* and for order of discharge, with the exhibits filed with the said petition, and said petition being duly verified by the affidavit of the petitioner, and upon the writ of *habeas corpus* issued on said petition on the 11th of August, 1896, and duly executed upon I. R. Harkrader, sheriff of Wythe county, and as such the jailer and warden of said county, in whose custody the petitioner is detained, and upon the return of said sheriff to said writ of *habeas corpus*, with the commitment filed therewith as the authority under which he acts, upon the demurrer of petitioner to said return and joinder in said demurrer, and upon the answer and denial of the said petitioner to said return, and upon the record in said case of H. G. Wadley *vs*. Blount and Boynton *et al.*, and upon the production of the body of said H. G. Wadley before this court by the said sheriff, the said sheriff appearing in person, and also by counsel, att'y gen. of Va., and after argument of counsel, and the court being fully advised in the premises, the court finds that the said petitioner, H. G. Wadley, is unlawfully restrained of his liberty by the county court of Wythe county, Virginia, by virtue of an order of the judge thereof, committing him to custody in default of bail, entered on 10 Aug., 1896, on an indictment of the Commonwealth of Virginia *versus* H. G. Wadley on a complaint of felony set up in the petition, notwithstanding the injunction and writ of this court, it is therefore considered and ordered by this court that the said H. G. Wadley be discharged from the custody of the said I. R. Harkrader, sheriff of Wythe county, Virginia, and from the custody of said court, as said court cannot prosecute said indictment pending said injunction, and that the said H. G. Wadley hold himself subject to the further order of this court.

And it is further ordered that the United States marshal for the western district of Virginia serve a copy of this order upon I. R. Harkrader, sheriff of Wythe county, Virginia, and as such the warden and jailer of said county, and also a copy thereof upon W. E. Fulton, judge of said court, and Robert Sayers, Jr., the Commonwealth's attorney for Wythe county, Virginia.

CHARLES H. SIMONTON,

Circuit Judge.

15th August, 1896.

To I. C. Fowler, clerk of this court at Abingdon, Va.

The att'y general of Virginia in his proper person states that for this order the Commonwealth of Virginia desires to appeal.

CHARLES H. SIMONTON.

Return.

Service of within accepted by copy handed us Aug. 21, '96.

ROBT SAYERS, JR.,
Commonwealth's Attorney.

WM. E. FULTON,
Judge of Co. Court, Wythe Co.

I. R. HARKRADER, S. W. C.

The foregoing is a true copy of the original this day entered of record in the order book of the court. Witness my hand and the seal of the said circuit court of the United States for the western district of Virginia, at Abingdon, this 19th day of August, 1896.

I. C. FOWLER, *Clerk.*

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Bill and Petition for Injunction.

Filed August 6th, 1896.

In the Circuit Court of the United States for the Western District of Virginia, at Abingdon.

H. G. WADLEY	} In Equity.
<i>vs.</i>	
BLOUNT & BOYNTON <i>et al.</i>	

To the honorable judge of said court:

The petition of H. G. Wadley, a resident and citizen of the city of Wilmington and of the State of North Carolina, would respectfully show to the court that, in vacation of this court on the 8th day of June, 1894, he presented to the Honorable Nathan Goff, the judge of the circuit court of appeals of the United States for the fourth circuit, sitting as a circuit judge, his bill in the above suit in equity for an injunction and for other purposes against the defendants in the above-named cause, whose names will be hereafter given in detail. The bill was duly verified by affidavit and was perfected according to law. Among other things, the bill charged that the defendants in the above cause, by an original bill filed in this court on the 5th day of October, 1893, under the style of Paul Hutchinson against the Wytheville Insurance & Banking Company, and by petitions of Blount & Boynton and others, creditors of said company, filed in said cause on 18th and 19th days of October, 1893, and by an amended and supplemental bill filed on the 25th of May, 1894, by said creditors, under style of Blount and Boynton *et al. vs.* said company and H. G. Wadley and others; that the said creditors by said proceedings alleged the insolvency of said company; that

they held debts and valid claims against the said company amounting to many thousand dollars in the aggregate, charging mismanagement of the business affairs of the company by H. G. Wadley, asking and obtaining the appointment of a receiver of the assets of the company, and also asking and obtaining the appointment of a master commissioner, with instructions by the court to investigate the conduct of the affairs of the company, report its assets and the manner in which they had been invested or disposed of, with other inquiries contained in the order of reference; that said proceedings charged the misappropriations of said assets by H. G. Wadley, and asking a personal decree against him; that the master, Preston L. Gray, after due notice to the parties, executed the order of the court, and in execution thereof and for the purposes of taking the account he took charge of all the books, papers, correspondence, and records of the said company bearing upon its official affairs, and, among other things, the master called himself and examined as a witness in the said cause your petitioner, H. G. Wadley, relative to his management of the business affairs of said company, of which he had been president, and that his deposition was so taken on the 8th day of February, 1894, to be read as evidence in said cause and before the said commissioner, who introduced him, as before stated, as a witness, and that petitioner was examined as a regular witness introduced in said cause; that he was cross-examined by the counsel for the creditors; that the object of his examination by said commissioner, and especially by the creditors, was to fix an individual liability on your petitioner, H. G. Wadley, by showing the unlawful disposition by him of the assets of the said company. The master filed his report on 27th April, 1894, in which he reported that your petitioner was indebted to said company in the sum of \$196,342.24; that thus your honorable court had prior jurisdiction of your petitioner and of all said creditors, of the assets of said company, its books, papers, accounts, and records, in fact of the entire subject-matter of controversy between the said creditors and your petitioner growing out of the business affairs of said company, of which petitioner had been president, and that a personal decree was asked by said creditors against your petitioner for said sum of \$196,342.24. The bill further showed that after these proceedings had thus

15 been instituted, and while they were still pending in your honor's court unadjudicated, and while your honorable court had prior and exclusive jurisdiction of all said parties and of said subject-matter, to the exclusion of all other courts and tribunals, that on the 16th day of May, 1894, the said creditors, by their counsel that were prosecuting the said equity proceedings in your honorable court, unlawfully withdrew from the files of said causes and from your honor's court a copy of the deposition of your petitioner, H. G. Wadley, and having some of their counsel summoned as witnesses before the grand jury of the county court of Wythe county, Virginia, upon said deposition or fragmentary part thereof, caused your petitioner to be indicted for an embezzlement and misappropriation of the funds of said company, and in said indictment, in the form of criminal charges, set up the same matters

and issues in said criminal proceedings as are set up in equity proceedings theretofore instituted and then pending in your honor's court, and that thus these identical creditors, acting by the same counsel, employed for the purpose, were pursuing your petitioner for identically the same subject-matter in the said equity suit pending in this court and in the criminal proceedings in the county court of Wythe county, Virginia. Your petitioner's bill alleged explicitly and as a matter of grievance to him that under this indictment thus illegally and unconstitutionally obtained he had been taken into custody by the said county court of Wythe county, Va., and was held under a bail bond to appear and answer the said indictment. The bill further charged that after the said master had made up his report and when the nature of the same and its findings had been communicated to the creditors that they and their counsel, after consultation together, decided to and did offer a proposition for settlement of the debts mentioned in the report of said master, and that this proposition for settlement was made directly to your petitioner, H. G. Wadley, by which they agreed to accept fifty cents on the dollar in full satisfaction of their said claims, and that the said offer being made said Wadley by a committee of the creditors for the purpose, it was promptly rejected by him, and that he was allowed only the period of ten days within which to accept or reject the said proposition of settlement or condonation of embezzlement viewed from the standpoint of the creditors. The said proposition, showing the terms thereof, the names of the creditors who participated therein, and the counsel who represented them, was filed as an exhibit with the bill; and it was charged and proven that before said offer of settlement was made that he was threatened with a criminal prosecution if he did not settle with them the debts they claimed to be due them by said company. It was further alleged in the bill that in the event he should pay said 50 cents on the dollar that the matter would be in full, but if he rejected the proposition he would be prosecuted criminally in the courts of the United States. The bill further alleged that the creditors had procured a copy of the report of the master and had used it as evidence before the grand jury, as well as a copy of the deposition of petitioner, and upon that evidence the said indictment had been procured. Petitioner insisted that his rights as a citizen of the United States had been violated by said grand-jury proceeding in this, that it is provided by the 5th amendment to the Constitution of the United States that no person shall be compelled in any criminal case to be a witness against himself, and that in pursuance of this provision of the Constitution the Congress of the United States enacted sec. 860 of the Revised Statutes, which prohibits the use of pleadings and evidence taken in judicial proceedings as testimony in criminal prosecutions. The conduct of creditors in unlawfully reading to said grand jury petitioner's deposition taken in the Federal cause was compelling him indirectly to testify against himself in said criminal cause as a basis of said indictment. The bill charged that the use of copies of the master's report and of petitioner's deposition in the criminal pro-

ceedings in Wythe county court, in the State of Virginia, was unconstitutional and illegal, as affecting the rights of petitioner, and also a flagrant contempt and abuse of the records of your honorable court. The bill asked for an injunction to restrain all use of said books, papers, and records by the said State court, and also to restrain the further prosecution of said indictment in the county court of said Wythe county, Virginia, and for general relief.

The exhibits were all filed with the bill, and it was answered by said creditors and by the Commonwealth's attorney of said
16 county, J. L. Gleaves.

Testimony was taken for both plaintiff and defendant and issues joined thereon. The cause came on to be heard before the Honorable Nathan Goff, circuit judge, at Abingdon, on the 8th day of June, 1894, upon a motion to dissolve said injunction and dismiss the said bill, and was heard upon the original bill for an injunction filed by your petitioner against the said Blount and Boynton *et al.*, with answer and general replication thereto, depositions of witnesses and argument of counsel, and the honorable judge took time to consider of his decision until January 31st, 1895, when, in an elaborate opinion, with his reasons therefor, he fully sustained the contention of your petitioner by refusing to dissolve the injunction, but continuing it in force in the manner hereinafter stated.

The Honorable Nathan Goff in his said opinion in this case, from all the testimony before him, was of the opinion and so adjudged that it was true that after the said creditors of the Wytheville Ins. and Bkg. Co. had intervened and had been made parties complainant in said original cause of Paul Hutchinson, &c., against said company, and after they had proven their claims before the master and he had formulated his report, that the said creditors, in a meeting called and held for the purpose of determining a proper course for them to pursue in the light of the case as shown by said report and petitioner's deposition, did submit to petitioner an offer to adjust the debt reported by the master, and as to which the creditors claimed petitioner was individually liable at a compromise at the rate of fifty cents on the dollar; but that the said creditors at the same time had an understanding among themselves that if petitioner declined such proposition that they would procure his indictment in the county court of Wythe county, Virginia, and prosecute him for the embezzlement of the funds of said company, and that the money required to carry on such criminal procedure was arranged for at the same meeting that the offer of compromise was agreed to. The honorable judge also decided and was of the opinion that when such offer of settlement was declined by petitioner that the said creditors proceeded to procure his indictment by using for that purpose a copy of his deposition so taken before the master of this court, and that they evidently procured the summoning of their own counsel as witnesses before the grand jury and having them assist in the preparation of the bill of indictment and in the prosecution of your petitioner under it. The honorable judge further decided that the criminal procedure when first suggested was intended to aid the said creditors in adjusting their debts with your

petitioner, and of this he says he has no doubt, and that the fact that the effort failed was wholly immaterial; and the honorable judge proceeds to say that the evidence discloses conduct on the part of said creditors that cannot be justified and is far from being conducive to the fair administration of justice; that it is in fact most reprehensible, dangerously near the border line that divides impropriety from criminality; and the honorable judge expresses the hope that never again in this jurisdiction will an effort be made to duplicate it. The honorable judge further decided that under the circumstances of this case it is proper for a court of the United States to restrain parties from prosecuting a case in the State court, and that the circumstances proven fully warranted it, and that under section 720 of the Revised Statutes of the United States, construed in connection with sec. 716, the courts of the United States have the power to issue all writs necessary to the exercise of their respective jurisdiction and agreeable to the usages and principles of law. He adjudges and decides that if a United States court has first obtained jurisdiction of a case, it can then always take such action as may be required to maintain its authority and enforce its decree, and under such circumstances sec. 720 of the Revised Statutes is not applicable, and the learned judge on page 15 of his opinion cites decisions of the Federal court in support thereof. He further adjudges that where the United States court has first obtained jurisdiction of the parties and of the subject-matter, and a criminal prosecution has been instituted while such civil suit was pending, involving the same subject-matter, and the parties procuring the indictment are the same as those in the civil suit, that such

17 Federal court whose jurisdiction was first sought and before which said civil proceedings were so pending and undetermined can restrain the parties from prosecuting the indictment until the civil cause can be heard and disposed of. He also cites many authorities in support of this position.

After full consideration of the entire case the Honorable Nathan Goff, as such circuit judge, for the reason mentioned, shall sustain the plaintiff's bill and continue in force the restraining order heretofore granted. Other questions interesting in character and of great general importance are raised by the plaintiff and are discussed by counsel, but I do not find that their consideration are essential to the disposition of this case, and therefore I shall not now allude to them.

I will pass a decree declaring that as the equity jurisdiction of this court first attached to both the parties and the subject-matter involved in this litigation that it will be improper to use the pleadings, proofs, and papers filed herein or any of them, or copies thereof, in any proceeding, civil or criminal, in any other court, against any party to this suit, while it is pending in and unadjudicated by this court.

And he then orders an injunction to issue restraining such use, and in terms enjoins all parties, including the attorney for the State, in Wythe county, Virginia, "from all further prosecution of the indictment now pending in the county court of said county, in

the name of the Commonwealth of Virginia *vs.* H. G. Wadley, in which he is charged with the embezzlement of the funds of the Wytheville Insurance & Banking Company, until the final hearing shall have been had and disposition made of the said cause of Paul Hutchinson, adm'r, *vs.* Wytheville Ins. & B'k'g Co. *et al.*, and the petitions and supplemental bill therein, and until the further order of this court."

A copy of the said opinion of the honorable judge is herewith filed, marked Exhibit "A," as a part of this petition.

Your petitioner would further show that on the 31st January, 1895, in pursuance to said written opinion, a decree was rendered in said cause of H. G. Wadley *vs.* Blount & Boynton *et al.*, in equity, on said bill for an injunction, and was duly entered by I. C. Fowler, clerk of the U. S. circuit court, at Abingdon, on that day.

From said decree it will be seen that this honorable court adjudged, ordered, and decreed that the motion to dissolve petitioner's injunction be, and the same was thereby, overruled, and it was adjudged, ordered, and decreed that said injunction should not be dissolved, but that for the reasons stated in the opinion and filed therewith that petitioner's said bill of injunction be sustained, and that the injunction theretofore granted should continue in force, and the said decree enjoined all the parties, their attorneys, clerks, and agents, and the attorney for the Commonwealth of Virginia for Wythe county, either directly or indirectly, from all further prosecution of the said indictment, and the court in its said decree adjudged that the plaintiff's bill was fully sustained, and gave petitioner the right to ask thereafter to make such further presentations of other questions to the court as he might be advised it was proper to do, and, as an evidence of the finality of said decree, it adjudged to your petitioner the costs of the cause, and ordered the clerk to tax the same and issue an execution in favor of petitioner for it, and further ordered that a copy of the decree be served on counsel of record in the cause or by an order of publication. A copy of that final decree is herewith filed, marked Exhibit "B."

Your petitioner would now aver that the said decree has never been appealed from, is unreversed, and is still in full force and effect, and is a final adjudication of the matters set up in said plaintiff's bill, which were fully sustained.

It will be observed from the opinion of this honorable judge, on page 5 of his opinion, that it was alleged in the bill that petitioner had been taken into custody by the county court of Wythe county, Virginia, and was then held under a bail bond to appear and answer the said indictment. In petitioner's bill for injunction he claimed that this said requirement of bail was illegal and in violation of his rights as a citizen of the United States, and in conformity to the prayer of his bill and of his complaint the honorable court, both in its opinion on page 17 and in the decree on page 21, enjoined all the parties and their attorneys and the attorney for the Commonwealth of Wythe county from all further prosecution of the said indictment. Your petitioner is advised that the

prosecution of an indictment embraces and comprehends all

steps and proceedings from its commencement to its final termination, including arrest, commitments to jail, bail, and trial, and all of its incidents. He is further advised that bail is but an enlargement of the prison bounds, and that the only difference between committing a prisoner to jail and admitting to bail is that in the first instance he is committed to the custody of the jailer, and in the last instance he is committed to the custody of the sureties in the bail piece or bail bond; and he is further advised that such sureties can produce his body at any time and surrender him to the custody of the jailer, and that in contemplation of law a prisoner on bail by a court is as much in custody as if he were incarcerated within the prison walls.

Petitioner would repeat that the injunction in this cause was awarded by honorable circuit judge on the 20th day of June, 1894, and it was executed on all of the defendants by service on their counsel of record on 21st of July, 1894. Petitioner had hoped that said creditors would obey this order of your honor's court and refrain from all further prosecution of the indictment referred to, and that the said creditors and their counsel and the Commonwealth's attorney of Wythe county would alike refrain from all further participation in or further prosecution of said indictment in obedience to said writ, which was duly executed on all of them; and your petitioner now comes to state his grievance, for redress of which this petition is filed.

As already stated, the said illegal indictment was procured in the county court of Wythe on 16th May, 1894, and on that day the said court admitted petitioner to bail, with V. C. Huff and C. M. Trinkle as his bailsmen, in the penalty of \$10,000, conditioned for his appearance at the July term, 1894. As stated, the said injunction was issued on the 20th June, 1894, and executed the next day. At the July term, 1894, of said county court, when the case was called of Commonwealth *versus* petitioner, the Commonwealth's attorney, with C. B. Thomas and James A. Walker, who were counsel for the creditors in the civil suit, produced the order of injunction before the said county court of Wythe and had it spread on the order book of said county court and asked a continuance of the case on account of the said order, which was granted, and required the said court to commit petitioner to jail or give bail, with sureties. Petitioner did give bail in same sum, with same bondsmen, returnable to August term of that court, 1894. The original order drawn up in this case for the clerk to enter was written by one of the counsel for the creditors, who was also counsel in the civil cause. If petitioner had not given such bail, he would have been committed to the common jail of Wythe county. Now, petitioner lives at Wilmington, North Carolina, and each trip to Wytheville casts him about fifty dollars. Nevertheless, he was again bailed at the August term, 1894, until September term; at September term until October term; at October term till November term; at November term to the December term; at December term, 1894, to January term, 1895; from January term, 1895, to February term, 1895. As already stated, on 31st January, 1895, the final decree in said cause

was entered, refusing to dissolve said injunction, sustaining fully the bill, and decreeing that the injunction should continue in force and especially enjoining creditors and their counsel and the Commonwealth's attorney of Wythe county from all further prosecution of said indictment.

Petitioner would now show that on the 9th February, 1895, in the county court of Wythe county, one of the counsel for said creditors, to wit, J. A. Walker, and another counsel for said creditors, C. B. Thomas, appeared along with the Commonwealth's attorney in said prosecution and entered themselves of record as special prosecutors in the case.* The original order drafted by one of said special prosecutors is herewith handed to the court as a part of this petition, marked Exhibit "C." On that day the Commonwealth's attorney, together with said special prosecutors who were counsel in the civil suit in the United States court, resisted a motion of petitioner for his discharge from the jurisdiction of said county court, and again, in order to avoid commitment to jail, your petitioner gave bail, with the same sureties, in the same bond, conditioned for petitioner's appearance in said county court, at July term, 19 1895; and again, at the July term, 1895, he was bailed to November term, 1895; he was bailed to April ter-, 1896, and at April term, 1896, he was again bailed over protest of petitioner, with the same sureties, in the same penalty, by said county court, upon the motion of Robert Sayers, Jr., Commonwealth's attorney of Wythe county, Va., and the said special prosecutors, J. A. Walker and C. B. Thomas, for his appearance before the county court of Wythe county, Va., on Monday, the 10th day of August, 1896, being the first day of the August term of said county court.

Thus it will be seen that petitioner has been required to make eleven trips to said Wythe county court from his home in North Carolina, at said great expense, which has become oppressive and burdensome to him, as well as in violation of his right as a citizen of the United States, and in violation of the decree of this court, referred to, entered on 31st January, 1895, and in contempt of said decree and the said court. The said Commonwealth's attorney and said creditors, by their said counsel, acting as special prosecutors, were not only served with said process of injunction, but at each of said terms have had the order of injunction copied into the order of continuance of the criminal case in the county court of Wythe, but at each term they and each of them have flagrantly disobeyed it by requiring bail from your petitioner, which was in effect continuing the prosecution of the said cause, and in effect depriving petitioner of his liberty by their disobedient conduct.

Petitioner avers that J. L. Gleaves, Esq., was the Commonwealth's attorney of Wythe county until the 1st of July, 1895, and since that time Robert Sayers, Jr., has been the Commonwealth's attorney, and in conjunction with said special prosecutors has continued said prosecution by calling up said case and demanding either a commitment of petitioner to jail or his admission to bail upon a heavy bond and sureties, which has amounted to a deprivation of the liberty of petitioner, and was a violation of the rights of petitioner as

a citizen of the United States, and a wilful disobedience of the decree of the United States court of 31st January, 1895, of which they and each of them had full knowledge. Petitioner avers that the said creditors, by their counsel, have been prime movers and instigators of said prosecution since said injunction was awarded and since the decree refusing to dissolve it and continuing the injunction in force, and they have co-operated actively with the said Commonwealth's attorney in the prosecution of said indictment, at each of the said terms of the county court of Wythe county, Va., by calling up the said indictment, having it continued, entering orders in the said case, and demanding the commitment of petitioner to jail unless he would give bail, with good sureties, in said sum of ten thousand dollars. Petitioner avers that on the said 10th of August, 1896, to which day he was again bailed to appear before said county court, unless (he) renews his bail he will be committed to the common jail of Wythe county in default of said bail, and that, too, upon the motion of said Commonwealth's attorney and said special prosecutors.

Your petitioner herewith exhibits a copy of the subpoena in chancery and injunction order that was executed upon the said creditors and said counsel and other parties except Robert Sayers, Jr., the present Commonwealth's attorney, it having been executed on his predecessor, J. L. Gleaves, Commonwealth's attorney, and from it the court will see the names of all said creditors who were parties defendant to said injunction cause of H. G. Wadley *vs.* Blount & Boynton *et al.*; and petitioner prays that it may be taken and considered as a part of this petition, marked Exhibit "D."

20

Subpœna in Chancery.

UNITED STATES OF AMERICA, }
 Western District of Virginia, at Abingdon, }^{ss:}

The President of the United States of America to the marshal of the western district of Virginia, Greeting:

You are hereby commanded to summon W. M. Blount and Wm. Boynton, citizens of Georgia; F. A. Sieghart, a citizen of New York; Mrs. Kate Nettles, a citizen of Louisiana; James R. Sergeant and Wm. R. Sergeant, partners under the style of Sergeant Bros., citizens of New York; Samuel Tieger, a citizen of New York; C. G. Fargo, a citizen of S. Dakota; American Biscuit Mfg. Company, a citizen of Illinois; The Desha Bank of Arkansas, a citizen of Arkansas; The Batesville Flouring Mill Mfg. Company, a citizen of Illinois; A. J. King, a citizen of South Carolina; A. M. Jordan and J. M. Jordan, partners under the style of Jordan Bros., citizens of South Carolina; H. S. Shephard, a citizen of South Carolina; J. P. M. Cox, a citizen of Alabama; W. N. Gray, a citizen of South Carolina; J. S. Vaughn, a citizen of Tennessee; T. A. Windle, a citizen of Virginia; Roanoke Mineral Wool Company, a citizen of Virginia; B. G. Chandos, administrator of the State of Wisconsin; J. J. & W. D. Dubose, partners under the style of J. J.

& W. D. Dubose, citizens of South Carolina; P. P. Pratt, a citizen of New York; J. J. Kiester, a citizen of Virginia; The Block Company, a citizen of Virginia; Andy Johnson, a citizen of Kentucky; The Hall & Hayward Company, a citizen of Kentucky; M. C. Pink and J. W. Pink, partners under the style of M. C. Pink & Co., citizens of Maryland; D. H. Stevenson and John D. Alexander, partners under the style of Stevenson, Alexander & Co., citizens of Maryland; W. T. Carter, under the style — W. T. Carter & Co.; Silas Kilbourne and Ansen D. Fessenden, citizens of Michigan and partners under the style of Silas Kilbourne & Co.; Phillip P. Kueborth, Phillip P. Kueborth, Jr., and G. J. Kueborth, partners under the style of Kueborth & Son, citizens of Maryland, who sue for the benefit of Edward Hollander and George Hollander, partners under the style of Chas. Hollander & Son, citizens of Maryland; Cannelton Paper Mill Co., a citizen of Indiana; Charles Wesiseker, for the benefit of Wm. Moherham, a citizen of New York; W. H. Waddill, a citizen of Virginia; Lantern Globe Company, a citizen of O.; J. B. Green, a citizen of Virginia; J. Crane, a citizen of Mississippi; A. B. Rodefer & T. A. Rodefer, partners under the style of Rodefer Bros., citizens of O.; Theodore A. Liebler and A. J. Mass, partners under the style of Liebler & Mass, citizens of New York; Andrew Jamison and R. L. W. A. Jamison, partners under the style of A. Jamison & Son, citizens of Pennsylvania; Matilda Lampheimer, a citizen of Louisiana; S. Baker, for the benefit of Isaac, Moses, & Weyer S. Halle, under style of S. Halle & Sons, citizens of Maryland; W. E. Rice, a citizen of Virginia; John C. Kingston, a citizen of New York; A. B. Walker and T. J. Walker, citizens of South Carolina; College Hill Press Brick Works, a citizen of Missouri; Beattyville Lumber Company, a citizen of Kentucky; Joseph Williams, Jr., a citizen of Pennsylvania; Mauver Newmand and Emil Hart, citizens of Illinois; Hiram A. Miller, a citizen of West Virginia; W. S. Wells, a citizen of Ohio; A. S. Gatewood and J. H. Gatewood, citizens of Virginia; S. Krasnoff, a citizen of South Carolina; Meyer Jonasson, Joseph Jonasson, and

21 J. Henry Rotchild, partners under the style of Meyer, Jonasson & Company, citizens of New York; J. Robertson and Thomas Hall, partners under the style of Robertson & Hall, citizens of Pennsylvania; Chicago Refining Oil Company, a citizen of the State of Illinois; N. Martin, a citizen of Illinois; Norwich Shook & Lumber Co., a citizen of Vermont; Ogdenburg Terminal Company, a citizen of New York; Alden Vinegar Company, a citizen of Mo.; Frances E. Johnson and J. B. Sharp, partners under the style of Johnson & Sharp and citizens of New York; Wong Quong Chong and Ah Chow, partners under the style of Chong Kee & Company, citizens of New York; W. H. Baker and H. P. Colvard, citizens of Georgia; Mrs. J. A. Drake, a citizen of Virginia; J. P. Taylor, a citizen of Virginia; W. H. Patterson, a citizen of Virginia; J. D. Pettinger, a citizen of Virginia; W. H. Gooch, a citizen of Virginia; M. B. Shands, trustee and assignee of S. J. Lankford, a citizen of Virginia; E. E. Smith, trustee and assignee of E. Penner, a citizen of Wisconsin; Adel Pino Bros., for

Western National bank, citizens of New York; N. Kimball, citizen of Michigan; S. D. McMillan, a citizen of Wisconsin; T. L. Richardson, U. O. Howe, and T. M. Lovejoy, citizens of Massachusetts; Ely Dowell Company, a citizen of Missouri; Art Publishing Company, a citizen of Massachusetts; Western Brass Mfg. Company, a citizen of Michigan; A. Martin, a citizen of Louisiana; W. H. Gooch, by W. D. Blanks, a citizen of Virginia; Mrs. J. A. Drake, a citizen of Virginia; J. D. Pettingill, a citizen of Virginia; V. P. Patterson, a citizen of Virginia; U. P. Taylor, a citizen of Virginia; W. D. Ryan and C. K. Malony, partners under the style of Ryan & Malony, citizens of Virginia; Chas. Thompson, a citizen of Tenn.; Thos. R. Spaulding and K. F. Miller, partners under the style of Spaulding, Miller & Co., citizens of Mo.; Wm. A. Pendleton, assignee, a citizen of Ky.; Thomas G. Hanley, a citizen of Virginia; M. L. Bowlin and Wm. Bowlin, partners under the style of M. L. Bowlin & Co., citizens of Indiana; W. H. White, a citizen of Georgia; J. B. Bagby, a citizen of Virginia; F. G. Dolon and C. F. Miller, partners under the style of Dolon & Miller, citizens of New York; Lizzie Schnitzen and Jno. Gay, partners under the style of Lizzie Schnitzen & Co., citizens of Missouri; P. L. Gray, master commissioner; J. L. Gleaves, Commonwealth's attorney of Wythe county; H. B. Maupin, receiver; H. J. Heuser, late receiver; I. C. Fowler, G. B. Thomas, G. J. Holbrook, W. L. Stanley, J. A. Walker, M. M. Caldwell, A. A. Campbell, W. S. Poage, Robert Crockett, J. J. A. Powell, W. H. Bolling, J. L. Kelly, and The Wytheville Insurance and Banking Company, its officers and agents, all of whom are citizens of the State of Virginia, and Paul Hutchinson, administrator of Chas. Hutchinson, deceased, a citizen of Iowa, if he be found in your district, to be and appear in the circuit court of the United States for the western district of Virginia, at Abingdon, on the first Monday in August next, to answer a certain bill in chancery, with injunction thereto, filed and exhibited in said court against Blount and Boynton and the other above-named parties by Hun G. Wadley, a citizen of the State of North Carolina.

Hereof you are to fail not, under penalty of the law therein ensuing, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this the 20th day of June, 1894, and in the 118 year of the Independence of the United States of America.

A copy.

[Seal United States Circuit Court, Western District of Virginia.]

Teste :

I. C. FOWLER, *Clerk.*

" In the Circuit Court of the United States for the Western District of Virginia, at Abingdon.

PAUL HUTCHINSON, Adm'r of Chas. Hutch- inson, Dec'd, <i>et al.</i>	}	On Original Bill in Equity.
<i>vs.</i>		
THE WYTHEVILLE INSURANCE & BANKING COMPANY,	}	
and		

BLOUNT & BOYNTON <i>et als.</i>	}	On Amended, Supple- mental, and Cross Bill in Same Suit.
<i>vs.</i>		
H. G. WADLEY <i>et als.</i>		

This day came H. G. Wadley, one of the defendants in the above proceedings in equity now pending in the above-named court, and he presented his bill for an injunction in his name against said Blount and Boynton *et als.*, and this said bill being duly sworn to by H. G. Wadley and fully supported by the affidavits of J. H. Gibboney, H. J. Heuser, and J. B. Barrett, Jr., the cause came on this day to be heard upon said bill for injunction and upon all the exhibits filed thereto and upon a transcript of the record of said original bill and said amended, supplemental, and cross bill above named, and upon reading said bill and affidavits and the said exhibits and transcripts the court is of opinion that the equity jurisdiction of the United States court above named first attached to both the persons and the subject-matter involved in said suits in equity, and that it is improper that the records of the pleadings, proofs, books, and papers filed in and parts of said equity suits now in litigation and pending unadjudicated in this court between said parties, or copies thereof, should be withdrawn therefrom and used by any one in any criminal or other proceeding in any other court against the said party to any of said suits in regard to any matters in issue in said suits in equity until the same have been fully adjudicated by this court, and it appearing to this court from said bill for injunction that such has been done and is now threatened by parties to said suits in equity for use in a criminal proceeding just begun by them in the county court of Wythe county, Virginia, against said H. G. Wadley for matters involved in and growing out of said suits in equity which were first instituted and are still pending in litigation and undetermined in this court, it is ordered that an injunction be awarded to said H. G. Wadley, according to the prayer of his bill; and it appearing to the court that the defendants in said bill are quite numerous, it is further ordered that service of this order on their counsel shall be equivalent to personal service on them.

But before this injunction shall take effect the said H. G. Wadley will execute a bond before the clerk of the court in the penalty of \$1,000.00, conditioned according to law, with N. L. Wadley as his

surety, who is approved as such surety, proof of her solvency being now made.

[Seal United States Circuit Court, Western District of Virginia.]

N. GOFF,
Circuit Judge.

June 8th, 1894.

To I. C. Fowler, clerk United States circuit court, Abingdon, Va.

23 The prayer of the said bill, according to which this injunction is awarded, as *recirws* in above decree, is as follows: Forasmuch as your orator can have no adequate relief except in this court, and to the end, therefore, that the defendants may, if they can, show why your orator should not have the relief prayed for, and that they may answer to the matters stated and charged, the prayer of your orator is that this bill of injunction and for relief be treated as incidental to said suit now pending in your honor's said court at Abingdon; that your honors may grant a writ of injunction, issuing out of and under the seal of this honorable court, restraining and enjoining, under the penalty for a violation thereof, all of the defendants to this bill, including their attorneys, clerks, and agents, either directly or indirectly, through their own agency or through the agency of others, from in any manner using against orator in any other court, State or Federal, in any other case, civil or criminal, the said deposition of your orator aforesaid taken in said suit in equity, or any copy thereof, or the report of Master Commissioner Gray taken or filed therein, or any copy thereof, or any of the books, papers, records, or correspondence, or any copies thereof or extract therefrom, of the Wytheville Insurance & Banking Company in the possession or that came under the control of said Gray, commissioner, or of H. J. Heuser, late receiver, or H. B. Maupin, present receiver, or of I. C. Fowler, clerk, in said equity suit that was brought in this court by said creditors; that your honor will likewise enjoin each and all of said defendants, creditors, who are now parties by the decrees of this court in said suit in equity now pending in this court, whether they are parties to the original bill or are plaintiffs in the amended, supplemental, and cross bill, or whose claims have been allowed by or presented to the master commissioner, Gray, for his allowance, together with all their attorneys, clerks, or agents, either through their own agency or acts or through the agency or acts of others, and also the said J. L. Gleaves, the Commonwealth's attorney of Wythe county, Virginia, either by himself or by the agency of others, and said Commissioner Gray, Receivers Heuser and Maupin, and said Clerk Fowler, by themselves or their agents or deputies, from all further prosecution of or participation by them or by either of them in the original procedure now pending in the county court of Wythe county, Virginia, in the name of The Commonwealth of Virginia *vs.* H. G. Wadley, upon an indictment for an embezzlement of the assets of the Wytheville Insurance & Banking Company, the said creditors having already submitted themselves and their claims affected by or involved in said criminal

procedure by their bill in equity to the prior jurisdiction of this court; that your honor upon final hearing of this cause will punish the parties involved for their unjust and unlawful misuse of the records of this court in said equity suit for the promotion and prosecution by said creditors of said original procedure against your orator now pending in the said county court of Wythe county, Virginia, put on foot by said creditors and their attorneys."

A copy.

[Seal United States Circuit Court, Western District of Virginia.]

Attest:

I. C. FOWLER, *Clerk*.

The above-required injunction bond was this day executed by H. G. Wadley, with Nannie L. Wadley as his surety, in the penalty of \$1,000, conditioned according to law.

June 20, 1894.

I. C. FOWLER, *Clerk*.

MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the clerk's office of the said court at Abingdon aforesaid on or before the day to which this writ is returnable the complaint will be taken against them as confessed, and a decree entered accordingly.

I. C. FOWLER, *Clerk*.

24

As a further reason for the relief asked for in this petition, plaintiff would aver that in the said cause of Blount & Boynton *versus* H. G. Wadley *et al.*, in which account was referred to Preston Lewis Gray, master commissioner, the said master has for quite a year been at work upon his report and has taken much testimony for both complainant and defendants therein and filed his report about the first of April, 1896, in the clerk's office of the United States circuit court, at Abingdon, Va., to which complainant filed quite a number of exceptions; and that case came on to be heard before the Honorable John Paul, sitting as circuit judge, at Abingdon, Va., on the 24th day of July, 1896, upon the said report of the master, exceptions of petitioner filed thereto, and the said honorable judge sustained each and every exception of said petitioner except the naked objection as to the incompetency of the said master to act, as to which he overruled this said exception; and the said creditors were decreed to pay \$1,060.00 costs to the master for said report and the case, by an order of reference as of 24th July, 1896, was recommitted to Commissioner Gray to retake and restate and again report the matters contained in said reference, the court having by its decree excluded all the testimony of the creditors and held that the report of the commissioner was erroneous and wholly contrary to equity.

The report being recommitted puts the case back to the original order of reference and it will take a great length of time, if ever it is done, to retake, restate, and again report said account according to the late order of reference of Judge Paul; and petitioner says that on account of this increased delay in that case, superinduced

by the acts of the said creditors, it would be grossly unjust to require petitioner to be held in the said county court of Wythe county, Virginia, for this additional great length of time and subject him to the expense of coming from his home in Wilmington, North Carolina, to Wytheville, Virginia, to renew his bail bond monthly or at frequent periods in said county court, for said creditors were prohibited, as before stated, from all further prosecution of said indictment against your petitioner. A certified copy of said late recommitment of said report by Judge Paul to said Commissioner Gray is herewith filed, marked Exhibit No. "E."

Petitioner would further show that the time for an appeal from the decree of the circuit court of the United States in said injunction cause of *H. C. Wadley vs. Blount & Boynton et al.* of 31st January, 1895, has long since expired, for the motion of creditors was to dissolve said injunction and be permitted to proceed with said prosecution; but said court by its decree of 31st January, 1895, refused said motion to dissolve, sustained the bill, and, in fact, adjudicated the matters in behalf of the petitioner.

Under the law regulating appeals in matters of granting or dissolving or refusing to dissolve injunctions an appeal from the action of this court in refusing to dissolve said injunction as such should have been taken within thirty days from said 31st day of January, 1895, and an appeal upon the merits of said case should have been taken within six months from said 31st January, 1895, to said circuit court of appeals of the United States, which period has likewise long since expired; and thus the said matter of the refusal to dissolve the injunction of Honorable Judge Goff enjoining the said proceedings on said indictment in said county court of Wythe is not only *res adjudicata* by a final decree, but the period for an appeal from it in every aspect has long since elapsed, and it would be unjust to perpetually hold petitioner in said county court of Wythe, even though the parties were not proceeding in contempt and violation of this court's order hereinbefore shown.

For these several reasons your petitioner comes into this court for the relief now to be asked.

Being aggrieved by the premises, your petitioner files this his petition in said equity cause of *H. G. Wadley vs. Blount & Boynton et al.* and prays that it may be taken and considered as a petition in and part of said cause; that notice be given to each of said creditors and their said counsel named in said subpoena, and also to Robert Sayers, Jr., Commonwealth's attorney, of Wythe county, Va., to appear before your honorable court at an early day and show cause why the said petitioner should not be discharged from the custody of said county court of Wythe county, Virginia, or why they
 25 should not be further required to absolutely refrain from all further exaction of bail from your petitioner and from any commitment of him to said county jail, and why they should not absolutely refrain from all further participation in or prosecution of said indictment by entering any order of any kind in said cause until the further order of this court, and that the said creditors answer for contempt of this court in violating the said decree of the

31st January, 1895, and that your honor will enter such orders and do such things as may be necessary to maintain its authority and enforce its decree and protect itself from the co-temptuous violation and disregard of its decree by said further prosecution of said indictment in the manner aforesaid; and, as said creditors are numerous, your petitioner prays that copies of an order to appear and answer this petition may be served upon counsel of record in this cause, and that such service may be equivalent to personal service on such creditors, and that your honor will enter all such orders and do all such things as may be necessary to maintain the jurisdiction of your honor's court and to enforce the said decree of that court which has been so flagrantly violated and disregarded as aforesaid.

And for all such other, further, and general relief as the nature of his case may require and to equity may seem meet and proper. Petitioner files herewith a transcript of the record of the county court of Wythe county since the issuance of said injunction and service thereof, to wit, from the 9th day of July, 1894, when the first order thereafter was entered in the said county court of Wythe county, Va., on said indictment, and it is marked Exhibit "E" as a part of this petition.

And, as in duty bound, he will ever pray, &c., &c.

H. G. WADLEY.

JOSEPH C. WYSOR,

D. F. BAILEY,

BLAIR & BLAIR,

Counsel for Petitioner.

UNITED STATES OF AMERICA, } To wit:
State of North Carolina, City of Wilmington,

H. G. Wadley, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and that the statements made therein are true as he verily believes.

H. G. WADLEY.

Sworn to by H. G. Wadley before me and by me subscribed on this the 17th day of July, 1896.

THOMAS EVANS,

[NOTARY SEAL.] Notary Public, County of New Hanover,
State of North Carolina.

The undersigned, counsel of H. G. Wadley, the foregoing petitioner, do hereby certify that they are regular practitioners in the United States circuit court for the western district of Virginia; that they are fully acquainted with all the facts set forth in the foregoing petition, and that in their opinion the said petition sets forth sufficient grounds for the relief prayed for by the said petitioner, and that in their opinion said relief should be granted him.

Given under our hands this the — day of July, 1896.

JOS. C. WYSOR.

D. F. BAILEY.

BLAIR & BLAIR.

26

"EXHIBIT "B."

"B." Filed Aug. 6, 1896, with petition to Simonton for inj.

In the Circuit Court of the United States for the Western District of Virginia, at Abingdon, Va., this January 31, 1895.

H. G. WADLEY, Plaintiff,

vs.

BLOUNT & BOYNTON and KATE NETTLES, C. C.

Fargo, American Biscuit Manufacturing Co., Desha Bank, Assignee Batesville Flouring Mill; Newfield Manufacturing Company, Amanda J. King, Jordan Bros., H. S. Sheppard, J. P. M. Cox, M. N. Gray, J. S. Vaughn, Roanoke Mineral Wool Company, B. G. Chandos, Administrator; J. J. Dubose, Paschal G. Pratt, J. W. Kester, The Block Company, Andy Johnson, Hall & Hayward Company, M. C. Pink & Company, Stevenson, Alexander & Co., Assignees W. T. Carter & Co., Adel Pino Bros., R. Kimball, S. D. McMillan, Richardson, Howe & Lovejoy, Jacob Ferman, Eli Dowell Manufacturing Co., Art Publishing Co., Western Brass Manufacturing Co., Charles Betcher Lumber Company, A. Martin, Ryan & Maloney, Charles Thompson, Spalding, Miller & Company, William A. Pendleton, Assignee; Thomas G. Handley, M. L. Bowlin & Co., W. H. White, J. N. Bagby, Dolan & Miller, L. Schnitzen & Co., Sarah A. Horton, Sarah A. Horton & Bell Brown, D. C. Williams, Charles Wisisiker, for Wm. Moorham, Assignee; W. H. Waddill, Lantern Globe Co., J. B. Green, J. Crane, Rodefer Bros., Leibler & Mass, A. Jameson & Co., Matilda Lampheimer, S. Baker, for S. Halle & Sons; W. H. Rice, John C. Kingston, Anna B. & T. J. Walker, College Press Brick Works, Beatyville Lumber Co., Joseph Williams, Jr., W. D. Jemes, D. B. Alexander, Mener Newman & Emil Hart, Hiram A. Miller, Mrs. F. S. Cox, B. Broughton, A. S. Gatewood & Brother, S. Krassnoff, Meyer Jonason & Co., Robertson & Hall, Chicago Refining Oil Company, Norwich Ship & Lumber Co., Ogdensburg Terminal Co., Alpheus Hinton, E. Parks, Alden Vinegar Co., Johnson & Sharp, Chong Kee & Co., E. E. Smith, Assignee of H. Penner; Obendorfer & Co., Defendants.

In Equity on an Injunction.

[On the margin:] Parties therefore, but found part.

This cause, in which a preliminary injunction was heretofore

awarded by this court on the — day of June, 1894, as shown by the said order entered therein, came on again this day to be heard upon the bill of complaint, with the affidavits of Hun G. Wadley, J. Hal. Gibboney, H. J. Heuser, and J. B. Barrett, Jr., annexed thereto; upon all the exhibits named and referred to in said bill, which are duly filed and exhibited therewith, including the entire record and proceedings in the case of Paul Hutchinson, administrator, etc., *vs.* The Wytheville Insurance & Banking Company *et al.*, the petitions of creditors filed therein, praying to be made parties, and the supplemental, amended, and cross bill filed therein, with all the exhibits filed with them; upon the demurrer and answer of Blount & Boynton and all the other defendant creditors; upon the separate answer of J. L. Gleaves, the Commonwealth's attorney of Wythe county, the latter having appeared in person at the taking of the depositions and at the several states of the case and participated in the argument of the case; upon the exceptions of plaintiff to the said demurrer and answers, because neither of the said answers nor the said demurrer is sworn to by any one, nor is the said demurrer certified to by any attorney, as required by the rules of this court; upon the joinder of the plaintiff in the said demurrer and upon the general replication of the plaintiff to each of the said answers; upon the depositions of witnesses taken by the plaintiff before Special Examiner W. B. Coleman, appointed for that purpose by an order entered in this cause, and upon the deposition of witnesses taken by the defendants before W. B.

27 Kegley, a notary public, and upon all the exhibits named and referred to in all the depositions, both of the plaintiff and defendants, which was certified by the said special examiner or the said notary public; upon the written notice of the defendants to the plaintiff of a motion to dissolve the said injunction, which motion to dissolve, by consent of all the parties, by counsel, was adjourned and continued without further notice until August 29, 1894, when came the plaintiff, by his counsel, and the defendants, by their counsel, and the said J. L. Gleaves in proper person, and the said J. L. Gleaves asked and obtained leave to withdraw his answer; whereupon the said motion to dissolve the said injunction was fully argued by counsel for the plaintiff and by counsel for the defendants and by the said J. L. Gleaves, Commonwealth's attorney, and the court, not being advised what order should be entered in the cause, took time until this day to consider thereof.

Whereupon, upon consideration of all the foregoing records, pleadings, proofs, exhibits, and arguments of counsel, for the reasons stated in writing and filed herewith as a part of this order, the court is of the opinion and doth hereby adjudge, order, and decree that the motion to dissolve the said injunction be, and the same is hereby, overruled, and doth adjudge, order, and decree that the said injunction should not be dissolved, and doth further adjudge, order, and decree, for the reasons stated in the opinion filed herewith, that the bill of the plaintiff be sustained, and that the injunction heretofore granted shall continue in force, and the court being of the opinion that the equity jurisdiction of this court first attached to both the

parties and the subject-matter involved in this litigation, and that it would be unjust, improper, and illegal to allow the use of any of the pleadings, proofs, and papers filed therein, or of any of the records exhibited therewith, or any of them, or copies of any of them, in any proceedings, civil or criminal, in any other court against any party to this suit, while it is pending in and is unadjudicated by this court, it is adjudged, ordered, and decreed that an injunction do issue further restraining any such use and enjoining all the parties hereto, including their attorneys, clerks, and agents, either directly or indirectly, and the attorney for the Commonwealth of Virginia for Wythe county, from all further prosecution of the indictment now pending in the county court of Wythe county, Virginia, in the name of The Commonwealth of Virginia *vs.* H. G. Wadley, in which he is charged with the embezzlement of the funds of the Wytheville Insurance and Banking Company, until the final hearing shall have been had and the final disposition made of the said cause of Paul Hutchinson, administrator, etc., *vs.* The Wytheville Insurance & Banking Company *et al.*, and of the petitions, and of the supplemental, amended, and cross bills filed therein, and until the further order of this court.

For the reasons mentioned in the written opinion of this court the plaintiff's bill is fully sustained. Other questions, interesting in character and of great importance, are raised by the plaintiff in his bill and were discussed by counsel, but the court does not now find that their consideration is necessary to the disposition of this cause, and therefore, without adjudicating them, the plaintiff is given the right hereafter, without any prejudice to him, to make such further presentation of them to this court as he may be advised it is proper to do; and it is further adjudged, ordered, and decreed that the plaintiff, H. G. Wadley, do recover from the defendants, being the creditors, all the costs expended by him in this cause, which will be taxed by the clerk and for which the said H. G. Wadley may have his execution; and it is further adjudged, ordered, and decreed that a copy of this order be served upon the counsel of record in this cause *ord in this cause* or by order
 28 of publication, as the plaintiff my elect.

And this caze is continued.

NATHAN GOFF,
U. S. Circuit Judge.

To I. C. Fowler, clerk United States fourth circuit court, at Abingdon, Va.

January 31st 1895.

29

Ex. "D."

(Paper No. 3.)

In the Circuit Court of the United States for the Western District of Virginia, at Abingdon.

H. G. WADLEY
vs.
BLOUNT & BOYNTON *et al.* }

Opinion and Decree of Hon. Nathan Goff, Judge of the Circuit Court of Appeals of United States for the Fourth Circuit, Sitting in Circuit at Abingdon, Va.

Subjects :

1. Prior jurisdiction of Federal courts maintained.
2. When Federal court can enjoin criminal prosecution in State court.

30 In the Circuit Court of the United States for the Western District of Virginia, at Abingdon.

H. G. WADLEY
vs.
BLOUNT & BOYNTON *et al.* } In Equity.

D. F. Bailey, Joseph C. Wysor, Blair & Blair, counsel for plaintiff.
J. A. Walker, M. M. Caldwell, J. L. Gleaves, counsel for defendants.

Opinion.

Goff, Circuit Judge :

This cause is before me on motion of defendants to dissolve the injunction granted on the 8th day of June, 1894, as prayed for in plaintiff's bill. In order to fairly understand the questions involved in this controversy and to appreciate those now disposed of, it is necessary that the main points raised in the case of Paul Hutchinson, adm'r of Charles Hutchinson, dec'd, *et al. vs. The Wytheville Insurance and Banking Company*, and in the petition filed therein in the name of Blount & Boynton and others, against said defendant and others, as also in the amended and supplemental bill, in the nature of a cross-bill, filed in said cause, by Blount & Boynton *et al. vs. H. G. Wadley* and others, to all of which reference is made in the pleadings and exhibits of this case; it being in fact a proceeding filed in and made a part of said original cause,—

31 should be referred to and briefly set forth.

The first-mentioned bill was filed on the fifth day of October, 1893, by Paul Hutchinson, a citizen of the State of Iowa against "The Wytheville Insurance and Banking Company," a corporation organized under the laws of the State of Virginia, and doing business at Wytheville, in the western district of Virginia.

The object of the suit was to ascertain the liabilities of said company, which was alleged to be insolvent, to secure the appointment of a receiver, and for such action as is usual in what is known as a creditor suit. On the 6th day of October, 1893, the court appointed H. J. Heuser, receiver, of the assets of such company, directing him to take charge of its property and see to the management of its business, and he duly qualified as such, proceeding with the discharge of the duties assigned him.

On the 18th and 19th days of the same month Blount & Boynton and other creditors of said Wytheville Insurance and Banking Company, filed their petitions in said cause and at their request were made parties complainants therein, they claiming that they had valid claims against said company, which were set forth, amounting to many thousand dollars in the aggregate; they charged mismanagement of the business affairs of the company, asking for the appointment of a master commissioner, the removal of the receiver, and for other action and relief, not required to be fully alluded to here. The court refused to remove the receiver, but appointed Preston L. Gray as master, with instructions to investigate the conduct of the affairs of said company, in what way it had been

32 managed, and of what its assets consisted: also that he ascertain in what manner the funds of the company had been invested and how the same had been disposed of; that he report the liabilities of the company, showing the sums due its policyholders and other creditors; the amounts theretofore paid its officers as salaries; in whose name the funds of the company have been kept, and such other matters relating to the business of said company as any party to the suit might request.

The said master after due notice to the parties proceeded to execute the order of the court, for that purpose taking charge of the books, papers, correspondence and records of the company, and calling and examining as witness the plaintiff H. G. Wadley, relative to his management of the business affairs of such company, of which he had been president. The said Wadley was so examined on the 8th day of February, 1894, being fully questioned by the master, by counsel for said company and also by his own counsel as well as those who represented the creditors, the same being in the form of a deposition taken before said master.

The object of this examination was to fix an individual liability of said Wadley, by showing the unlawful disposition by him of the assets of the Wytheville Insurance and Banking Company.

The master filed his report on the 27th day of April, 1894, in which it is set forth that Wadley is indebted to the company in the sum of \$196,342.24. On the 25th day of May, 1894, the said creditors filed an amended and supplemental bill, against such company, Wadley, and others, rendered necessary or advisable, it was supposed, because of the developments brought out by the examination

33 before and the report made by the master, the intention being to secure a personal decree against said Wadley for the sum so shown by the master, of his indebtedness to the company. On the 29th of May, 1894, on the motion of such creditors, the court

removed Heuser, as receiver, and appointed to succeed him H. B. Maupin, and also recommitted the report to the master in order that additional proof relative to certain claims against the company might be taken. Numerous exceptions have been noted to the master's report, all of which are as yet undisposed of. The suit is still pending and the questions raised by the pleadings and proofs are unadjudicated.

On the 16th day of May, 1894, in the county court of Wythe county, Virginia, an indictment against said H. G. Wadley was returned by the grand jury then attending that court in which he was charged with the embezzlement and misappropriation of the funds of the Wytheville Insurance and Banking Company in the particular instances and amounts, as reported by the said master in his report so filed in this court. The bill I now consider, was presented on the 8th day of June, 1894, in which after reciting much of the history of the litigation to which I have made reference, it is charged that the same creditors — so submitted themselves to the jurisdiction of this court, and who so petitioned this court to consider and adjudicate the matters referred to in said suits, are the identical parties who, acting by counsel employed by them for that purpose—the same counsel who so represented and now represent such creditors in this court, caused said indictment to be instituted and are now conducting the criminal prosecution founded thereon, and also it is charged therein that the same matters,

34 rights, and issues are involved in said criminal proceeding, as are set forth in the civil pleadings so theretofore submitted by such creditors to the determination of this court, that Wadley is the same person pursued by them, in their proceedings in the civil suits in this court and in the criminal proceeding in the county court of Wythe county, Virginia. It is also alleged that Wadley has been taken into custody by the said court, and is now held under a bail bond to appear and answer said indictment. And it is further charged that after said master had made up his report, and when the nature of the same and the contents thereof had been communicated to said creditors, that they and their counsel, after consultation together, decided to and did offer a proposition for the settlement of the debts mentioned in the report, to the said Wadley, they agreeing to accept fifty cents on the dollar in full satisfaction of their said claims, the said offer being communicated to Wadley by a committee of the creditors appointed for that purpose at the consultation alluded to, and being by him promptly rejected—it being set forth in the same, which was reduced to writing, that it was only to remain in force for the period of ten days. The plaintiff now charges that said offer was intended as a threat, the effect being to intimidate him, and force him to pay the debts of said company. The said proposition showing the terms thereof, the names of the creditors who participated in it, and the counsel who represented them, is filed as an exhibit with the bill, in which it is also charged that after the plaintiff's deposition was taken by the said master, and before the said meeting of creditors was held and their offer of adjustment made to him, that he was threatened by

them with a criminal prosecution if he did not settle with them the debts they claimed to be due and payable to them by said company.

It is also alleged in the bill that such creditors procured a copy of the report as made by Master Commissioner Gray, the same not having as yet been submitted for the action of this court, and used it as evidence before said grand jury, portions of it having been read for that purpose to such jury by counsel for said creditors, who had caused themselves to be summoned as witnesses in order to thereby obtain the finding of the indictment against Wadley. It is also charged that they also so used a copy of the deposition of the plaintiff, so taken by the master, and now filed in said cause.

The plaintiff insists that his rights as a citizen of the United States were thus violated, as it is provided in the fifth amendment of the Constitution that no person shall be compelled in any criminal case to be a witness against himself, and that in pursuance of this provision the Congress has enacted section 860 of the Revised Statutes, prohibiting the use of pleadings and evidence taken in judicial proceedings as testimony in criminal prosecutions. As I dispose of this case on other grounds, I will not discuss the questions relating to the use of copies of the master's report and plaintiff's deposition in the criminal procedure in Wythe county court in the State of Virginia, but in passing them by will remark that I cannot conceive of any proper way by which papers could have been used as evidence before the grand jury of that county—under the circumstances as set forth in the bill and proceedings of this cause—and but for the uncontradicted testimony of a number of witnesses, I would not think it possible that such action could be had before any grand jury duly in session under any court in this country. Nor will I intimate by any ruling on the matter at this time, that

any court of the State of Virginia will during the trial of a criminal cause, permit such copies or evidence of that character, to be offered for the consideration of the jury. Should I be mistaken in this, the remedy would I think be plain, and the relief without doubt. There are other allegations in the bill relative to the action of said creditors, and the rights of the plaintiff, but I do not find it necessary to allude to them now.

On consideration of the bill, the exhibits and the proceedings had in the original cause, I directed an order, in substance restraining the further prosecution of said indictment until the matters referred to by plaintiff could be heard and determined by this court. The creditors have filed their joint answer, in which they admit the allegations of the bill relative to the proceedings in this court in the suit of Paul Hutchinson, adm'r, &c., *vs.* The Wytheville Insurance and Banking Company, and their connection with the same; they admit that this court to the fullest extent obtained complete jurisdiction over the subject-matters of and the parties to said suit, but they insist that Wadley himself was not a party thereto; they admit the examination of Wadley before the commissioner, and his cross-examination by their counsel, and claim that he was not called by them, but that he voluntarily submitted himself for such ex-

amination. A considerable portion of their answer is devoted to a statement from the standpoint of said creditors, of the manner that Wadley managed the business affairs of the companies with which he was officially connected, especially the Wytheville Insurance and Banking Company, and they set forth how it was that he despoiled it and them of their assets. They admit the offer of compromise and deny making threats of criminal prosecution, or that

37 their counsel procured themselves to be summoned as witnesses before the grand jury, or that they read a copy of said depositions before it; they also admit that they employed counsel to assist the attorney for the State in the prosecution of the indictment returned against Wadley in the county court of Wythe county, insisting that it was entirely proper for them to do so.

Other statements in the answer I do not deem it necessary to call attention to now. The defendant J. L. Gleaves files his separate answer in which he claims that he is the attorney for the Commonwealth for Wythe county, Virginia, and that it is his duty to prosecute said Wadley on the indictment so found, and that this court has no right, authority or jurisdiction to enjoin and prohibit him from so doing. He claims that he was not a party to the litigation pending in this court, and not familiar with the proceedings had therein, and he admits that this court obtained in proper and lawful manner complete jurisdiction over all the parties and the issue involved in the suit of Hutchinson, adm'r, &c., vs. The Wytheville Insurance and Banking Company. He denies that the creditors who submitted themselves to the jurisdiction of this court, are the parties who are conducting the criminal proceedings against Wadley, and insists that the State of Virginia, acting through her grand jury instituted the same, and that he in his official capacity has charge of it. He also denies that any "Federal record" was unlawfully used in procuring said indictment, but that it was returned on the evidence of witnesses regularly summoned by him for that purpose. The other matters set forth in the answer of defendant Gleaves as to what transpired in the county court of Wythe county, subsequent to the finding of the indictment against Wadley, 38 or as to what can be made to appear from the books, records and papers of the Wytheville Insurance and Banking Company, relative to his misappropriation of the funds of that institution, are not material to the points on which I think this case must be decided.

After examining the entire record in all the mass of litigation drawn into this controversy, I find that so far as the questions now presented are concerned, that the greater part thereof can be eliminated as not germane, and that the real issue is a simple one, elementary in character, not "startling and unusual" as counsel have claimed,—the decision of which follows as matter of course, when we apply the facts as found and admitted, to the law about which there is no controversy. That this court by proceedings instituted in October, 1893, obtained jurisdiction over the property of the Wytheville Insurance and Banking Company, and over the parties to said suits, including those who came in by petition as well as

those who appeared before the master, is I think beyond controversy. The court took the assets of said company into its custody, and placed them in the possession of its receiver, and it directed its master to make and state an account, showing what application had been made of the funds of the company, where the same were, who the creditors are and the sums due them. In executing this order of the court, the master had all the creditors of the company before him, as well as the company itself, and Wadley, the president thereof, as to whom the said creditors were endeavoring to make such a case as would establish his individual responsibility for their claims. That the order of this court justified such proceedings before the master, the creditors, their counsel and the master evidently believed

and the court is not now disposed to differ with them. That
39 Wadley himself was, after the filing of the petitions by Blount & Boynton and others, in October, 1893, in which he was charged with misappropriation of the funds of said company, and required to answer the special interrogatories therein propounded, and defend himself before the master, in effect a defendant to said suit, is well established by the authorities: *Buerk vs. Imhaueser*, 8 Fed. Rep. 457; *Carter vs. The City of New Orleans*, 19 Fed. Rep. 659; *Seegee vs. Thomas*, 3 Blatchf. 11, Fed. Cases § 12633; *Ander-son vs. Watt*, 138 U. S. 694.

Under all the circumstances of this case it would be inequitable to permit the creditors who filed their petition against Wadley, and who insisted before the master, that he was individually responsible and liable to them for their debts against said company, to now contend that the one who has been so proceeded and reported against is not and has not been a party to the suit. They are estopped in a court of conscience from making such a claim, by their words and acts, and by the record they have made in this case. Independent of this, the cross-bill makes Wadley a formal party to the litigation, subjecting him beyond all question to the jurisdiction and decree of the court, and entitling him to its protection relative to all matters affecting the questions fairly involved in the pleas yet to be determined by it.

The question then is shall a court which has first acquired jurisdiction of the parties to and the subject-matter of a controversy, retain the exclusive control of the same, until it has fully disposed of the questions raised by the pleadings before it? The authorities answer this question in the affirmative, the decisions are all one way and the rule is the same in both civil and criminal cases.

The only matter is as to the court first securing jurisdiction
40 tion. If that be a court of the State then the court of the United States must not and will not interfere. The State courts should observe the same rule, and they generally do. This court will not permit its process to be used, either civil or criminal, by parties engaged in litigation in the courts of the State of Virginia, relative to the subject-matter of such litigation, thereby impeding the administration of justice by rendering it impossible for those materially interested therein to properly prepare and submit their case for the decision of that court the jurisdiction of which

was first prayed for and granted, nor will it, I deem it proper to add, tolerate any such interference by the courts of that State with judicial proceedings regularly before it and exclusively within its jurisdiction.

The suggestion made in the answer of the attorney for the Commonwealth, that judicial comity requires that one court shall grant to another the use of its records and copies of the papers in its custody, and that it will also direct its officers to obey a *subpoena duces tecum* relative thereto, when satisfied that the same are material as evidence in a case pending in the court issuing such summons, is as a general proposition true, but it would be extending the matter of courtesy beyond reasonable limits for that court which has complete jurisdiction over a cause pending before and undetermined by it, to authorize or consent to the use by another court of the pleadings, commissioner's reports and depositions filed in said cause, before they have been considered for the purpose for which they were intended, it appearing also that the court so desiring them designs to use them in a case over which it had assumed jurisdiction even after the making and filing of the particular

papers asked for, and which involved the same parties and
41 the identical subject-matter as does the case so before it. No precedent can be found for such a request, and I indulge the hope that no court will ever so rule as to furnish an authority that would justify such a proceeding.

It appears that the county court of Wythe county was fully advised of the pendency in this court of the litigation referred to, that it expressed a desire to prevent the improper use of copies of certain parts thereof before its grand jury, and that counsel called its attention to the fact that the matters set out in the indictment were the same as those involved in said suit, insisting at the same time that said indictment had been procured by the unlawful use of said copies, and also suggesting that the prosecution of the same, under the circumstances would be discourteous to this court. I trust I may be permitted to say that it would have been well had that court then have recalled and exercised the judicial comity to which its able and energetic prosecutor now so eloquently alludes.

On the question of jurisdiction, and the right of the court first acquiring it, to retain exclusive control of the subject-matter and the parties, until it has fully disposed of the questions submitted to it, if authority is desired, it can be found in the following cases: *Union Trust Co. vs. Rockford, R. I. and St. L. R. Co.* 6 Biss. 197, Fed. Cases 14401; *Sedgwick vs. Menck*, 6 Blatchf. 156 Fed. Cases 12616; *Judd vs. Bankers' and Merchants' Tel. Co. and others*, 31 Fed. Rep. 182; *Schuele vs. Reiman*, 86 N. Y. 270; *Hagan vs. Lucas*, 10 Pet. 400; *Williams vs. Benedict*, 8 How. 111; *Taylor vs. Carryl*, 20 How. 583; *Freeman vs. Howe et al.*, 24 How. 450; *Buck vs. Colbath*, 3 Wall. 334; *Covell vs. Heyman*, 111 U. S. 176; *Heidritter vs. Elizabeth Oil Cloth Co.* 112 U. S. 294; *Rio Grande Railroad Co. vs. Gomilla*, 132 U. S. 478.

42 I find from the testimony in the case, that after the creditors of the Wytheville Banking and Insurance Company

had intervened and been made parties complainants in the said suit of Paul Hutchinson, adm'r &c. against that company and others, and after they had proven their claims before the master and he had formulated his report, that they in a meeting called and held for the purpose of determining the proper course for them to pursue, in the light of the case as shown by said report and Wadley's deposition, concluded to submit to him, the said Wadley an offer to adjust the debts reported by said master, (as to which it was claimed he was individually liable,) at the rate of fifty cents on the dollar, at the same time having an understanding among themselves that if he declined such proposition that they would procure his indictment in the county court of Wythe county, and prosecute him for the misappropriation of the funds of said company,—the money required to carry on such criminal procedure being arranged for at the same meeting that the offer of conference was agreed to. And also do I find that when such offer was declined by Wadley, that they proceeded to procure his indictment, using for that purpose a copy of his deposition so given before the master of this court, and evidently procuring the summoning of their counsel as witnesses before the grand jury (some of whom declined to go before that body unless they were first duly subpoenaed so to do) and having them assist in the preparation of the bill of indictment, and in the prosecution of Wadley under it. That the criminal procedure when first suggested was intended to aid the creditors in adjusting their debts with Wadley is, I think without doubt, and the fact that

43 the effort failed is, so far as the matter now before me is concerned, immaterial. The circumstances were, it must be conceded, unusually anomalous, such as to naturally cause excitement and indignation, yet nevertheless as the evidence discloses conduct that cannot be justified and is far from being conducive to the fair administration of justice; that is in fact most reprehensible, dangerously near the borderland that divides impropriety from criminality, and I truly hope that never again in this jurisdiction will an effort be made to duplicate it.

We now have nothing to do with the questions which involve the guilt or innocence of Wadley, on the charges set forth in the indictment, or his liability because of mismanagement by him of the affairs of said Wytheville Insurance and Banking Company, as alleged in the proceeding before referred to. These matters in the regular discharge of judicial procedure, in due time and place will be considered and disposed of. We are now concerned in seeing that all the parties to this litigation, plaintiffs and defendants, creditors and debtors, accusers and accused, shall each and all have every proper opportunity to fairly present their respective claims, and also that the court is neither delayed nor hampered in reaching a just conclusion.

If circumstances can exist under which it is proper for a court of the United States to restrain parties from prosecuting a case in a State court, they certainly are now before us, and that there are cases where it is entirely proper so to do has been declared by courts worthy of our confidence and commanding our respect. It is

claimed that section 720 of the Revised Statutes of the United States prohibits the granting of an injunction in cases like the one I now consider, but such insistence is without merit. That section is to be construed in connection with section 716, which gives 44 to the courts of the United States the power to issue all writs necessary to the exercise of their respective jurisdictions and agreeable to the usages and principles of law. If a United States court has first obtained jurisdiction of a case, it can then always take such action as may be required to maintain its authority and enforce its decrees, and under such circumstances section 720 of the Revised Statutes is not applicable. *Fisk vs. Union Pac. R. Co.*, 10 Blatchf. 518 Fed. Cases 4830; *French Trustee vs. Hay*, 22 Wall. 250; *Deitzsch vs. Huidekoper*, 103 U. S. 494; *Sharon vs. Terry*, 36 Fed. Rep. 365; President, &c., of Bowdoin College *et al. vs. Merritt et al.*, 59 Fed. Rep. 6.

That an injunction may be issued under such circumstances is now well established by decisions, and that it may apply to a criminal as well a civil suit is not without precedent. A careful examination of the authorities leads me to the conclusion that, in cases where a criminal prosecution has been instituted while a civil suit was pending involving the same subject-matter, and the parties procuring the indictment are the same as those who instituted the civil suit, that the court whose jurisdiction was first sought and before which said civil proceedings is so pending and undetermined, will restrain the parties from prosecuting the indictment until it can hear and dispose of said suit.

In Story's Equity Jurisprudence, vol. 2, section 893, it is said: "There are, however, cases in which courts of equity will not exercise any jurisdiction by way of injunction to stay proceedings at law. In the first place, they will not interfere to stay proceedings in any criminal matters, or in any case not strictly of a civil nature.

As for instance, they will not grant an injunction to stay proceedings on a mandamus, or an indictment, or an information, or writ of prohibition. But this restriction applies only 45 to cases where the parties seeking redress by such proceedings are not the plaintiffs in equity; for if they are, the court possesses power to restrain them personally from proceeding, at the same time upon the same matter of right, for redress in the form of a civil suit, and of a criminal prosecution. In such cases the injunction is merely incidental to the ordinary power of the court to impose terms upon parties, who seek its aid in furtherance of their rights."

In Beach's Modern Equity Practice, vol. 2, section 761, we find the following: "It is a rule of almost universal application both in England and in this country that a court of equity has no jurisdiction to restrain a criminal proceeding whether it be by indictment or summary process, unless the criminal proceedings be brought by a party to the suit already pending in the equity court and to try the same right that is in issue there."

On this subject see the following authorities: *Turner vs. Turner*, 15 Jurist, 218; *Mayor of York vs. Pilkington*, 2 Atk. 302; *Lord Montague vs. Dudman*, 2 Ves. 396; *Attorney General vs. Cleaver*,

18 Ves. 220; Kerr *vs.* Preston, 6 Ch. D. 463; Spink *vs.* Francis, 19 Fed. Rep. 670, and 20 Fed. Rep. 567; Eden on Injunct. ch. 2 p. 42; Jeremy on Eq. Jurisd. B. 3 ch. 2 p. 308; 3 Woods Lect. 56; 3 Dan. Ch. Pr. 1721; *In re* Sawyers, 124 U. S. 211, in which Mr. Justice Gray in delivering the opinion of the court said: "The modern decisions in England by eminent equity judges, concur in holding that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there."

46 & 47 From the reason mentioned I shall sustain the plaintiff's bill and continue in force the restraining order heretofore granted. Other questions interesting in character and of great general importance are raised by the plaintiff and are discussed by counsel, but I do not find that their consideration is essential to the disposition of this case, and therefore I shall not now allude to them. I will pass a decree declaring that as the equity jurisdiction of this court first attached to both the parties and the subject-matter involved in this litigation, that it will be improper to use the pleadings, proofs and papers filed herein, or any of them, or copies thereof, in any proceedings civil or criminal, in any other court against any party to this suit, while it is pending in and is unadjudicated by this court,—and an injunction may issue restraining such use and enjoining all of the parties hereto, including their attorneys, clerks and agents, either directly or indirectly, and the attorney for the State for Wythe county, Virginia, from all further prosecution of the indictment now pending in the county court of said county, in the name of the Commonwealth of Virginia against H. G. Wadley in which he is charged with the embezzlement of the funds of the Wytheville Insurance and Banking Company, until the final hearing shall have been had and disposition made of the same cause of Paul Hutchinson, adm'r, &c., *vs.* The Wytheville Insurance and Banking Company and others, and the petitions and supplemental, amended and cross bill filed therein, and until the further order of this court.

January 31, 1895.

NATHAN GOFF,

U. S. Circuit Judge, Fourth Circuit.

A copy.

Teste:

I. C. FOWLER, *Clerk.*

February 7, 1895.

48 In the Circuit Court of the United States for the Western District of Virginia, at Abingdon.

H. G. WADLEY	} In Equity. On an Injunction.
<i>vs.</i>	
BLOUNT & BOYNTON <i>et al.</i>	

Decree.

This cause, in which a preliminary injunction was heretofore awarded by this court, on the — day of June, 1894, as shown by the
6—678

said order entered therein, came on again this day to be heard, upon the bill of complaint, with the affidavits of H. G. Wadley, J. Hal. Gibboney, H. J. Heuser, and J. B. Barrett, Jr., annexed thereto; upon all of the exhibits named and referred to in said bill, which are duly filed, and exhibited therewith, including the entire record and proceedings in the case of Paul Hutchinson, adm'r, etc., vs. The Wytheville Insurance and Banking Company *et als.*, the petitions of creditors filed therein, praying to be made parties, and the supplemental, amended and cross bill, filed therein, with all the exhibits filed with them; upon the demurrer and answer of Blount & Boynton and all the other defendant creditors, upon the separate answer of J. L. Gleaves, the Commonwealth's attorney of Wythe county, the latter having appeared in person at the taking of the depositions, and at the several stages of the case, and participated in the argument of the case; upon the exceptions of plaintiff to

the said demurrer and answers, because neither of the said
 49 answers nor the said demurrer is sworn to by any one, nor is the said demurrer certified to by any attorney, as required by the rules of the court; upon the joinder of the plaintiff in the said demurrer, and upon the general replication of the plaintiff to each of the said answers upon the depositions of witnesses, taken by the plaintiff, before special examiner, W. D. Coleman, appointed for that purpose by an order entered in that cause, and upon the depositions of witnesses, taken by the defendants before W. B. Kegley, a notary public, and upon all the exhibits named and referred to in all the depositions, both of the plaintiff and defendants, which were certified by the said special examiner, or the said notary public; upon the written notice of the defendants to the plaintiff of a motion to dissolve the said injunction, which motion to dissolve, by consent of all the parties by counsel, was adjourned and continued, without further notice, until August 29, 1894, when came the plaintiff by his counsel, and the defendants by their counsel, and the said J. L. Gleaves, in proper person; and the said J. L. Gleaves asked, and obtained leave to withdraw his answer, whereupon the said motion to dissolve the said injunction was fully argued by counsel for the plaintiff, and by counsel for the defendant, and by the said J. L. Gleaves, Commonwealth's attorney; and the court not then being advised what order should be entered in the cause, took time, until this day, to consider thereof.

Whereupon upon consideration of all the foregoing records, pleadings, proofs, exhibits, and arguments of counsel, for the reasons stated in writing, and filed herewith as a part of this order, the
 court is of the opinion, and doth hereby adjudge, order, and
 50 decree that the motion to dissolve the said injunction, be, and the same is hereby overruled, and doth adjudge, order and decree that the said injunction should not be dissolved; and doth further adjudge, order, and decree, for the reasons stated in the opinion filed herewith, that the bill of the plaintiff be sustained, and that the injunction, heretofore granted, shall continue in force. And the court, being of the opinion that the equity jurisdiction of this court first attached to both the parties, and the subject-matter

involved in this litigation ; and that it would be unjust, improper, and illegal to allow the use of any of the pleadings, proofs, and papers filed therein, or of any of the records exhibited therewith, or any of them, or copies of any of them, in any proceedings, civil or criminal, in any other court, against any party to this suit, while it is pending in, and is adjudicated, by this court, it is adjudged, ordered, and decreed that an injunction do issue, further restraining any such use, and enjoining all the parties hereto, including their attorneys, clerks, and agents, either directly or indirectly, and the attorney for the Commonwealth of Virginia for Wythe county, from all further prosecution of the indictment, now pending in the county court of Wythe county, Virginia, in the name of The Commonwealth of Virginia *vs.* H. G. Wadley, in which he is charged with the embezzlement of the funds of the Wytheville Insurance and Banking Company, until the final hearing shall have been had, and the final disposition made of the said cause of Paul Hutchinson, adm'r, etc., *vs.* The Wytheville Insurance and Banking Company, *et als.*, and of the petitions, and of the supplemental, amended, and cross bill filed therein and until the further order of this court.

51 For the reasons mentioned in the written opinion of this court, the plaintiff's bill is fully sustained. Other questions interesting in character, and of great importance are raised by the plaintiff in his bill, and were discussed by counsel, but the court does not now find that their consideration is necessary to the disposition of this case, and therefore, without adjudicating them, the plaintiff is given the right, hereafter, without any prejudice to him, to make such further presentation of them to this court, as he may be advised it is proper to do so.

And it is further adjudged, ordered, and decreed that the plaintiff H. G. Wadley, do recover from the defendants, being the creditors, all the costs expended by him in this cause, which will be taxed by the clerk, and for which the said H. G. Wadley may have his execution.

And it is further adjudged, ordered, and decreed that a copy of this order be served upon the counsel of record in this cause, or by an order of publication as the plaintiff may elect.

And this cause is continued.

To I. C. Fowler, clerk United States circuit court, at Abingdon, Virginia.

January 31, 1895.

Endorsement.

Executed by delivering in person, at Wytheville, Va., a true copy of the within decree, on February 28th, 1895, to each of the following persons, to wit, James A. Walker, C. B. Thomas, W. A. Poage, J. J. A. Powell, W. N. Caldwell, W. H. Bolling, J. L. Gleaves, and on March 11th, 1895, on H. B. Maupin, receiver, by delivering a true

copy thereof to Robert Sayers, Jr., his clerk, at the office of said receiver.

G. W. LEVI, *U. S. M.*,
Per JNO. W. FICKLE, *D. M.*

Marshal's cost, \$20.90.

52 EXHIBIT "No. E." Filed August 6th, 1896.

At an adjourned term of the circuit court of the United —, continued and held for the western district of Virginia, at Abingdon, Va., in the fourth circuit, on Friday, the 24th day of July, A. D. 1896.

Present: Hon. John Paul, district judge, presiding.

PAUL HUTCHINSON, Adm'r, &c.,	} No. 216.
<i>vs.</i>	
THE WYTHEVILLE INSURANCE & BANKING CO.	
and	
BLOUNT & BOYNTON, &c.,	}
<i>vs.</i>	
H. G. WADLEY & Others.	

This cause came on to be heard on this 24th day of July, 1896, upon the papers formerly read and the report of Standing Commissioner Preston Lewis Gray filed on the 30th day of March, 1896, and the exceptions filed to said report by H. G. Wadley and Mrs. Nannie L. Wadley, H. J. Heuser, Mary A. Heuser, John B. Barrett, and J. Hal. Gibbonny, and the argument of counsel.

On consideration the court is of opinion, and doth so adjudge, order, and decree, that the first exception, as to the commissioner being an improper person to take said account, is not well taken, and the same is overruled.

The second exception, as to want of proper notice, is well taken and is sustained.

The third exception, that the commissioner received as against the defendants H. G. Wadley and Nannie L. Wadley, parties defendant to the amended and supplemental bill, testimony taken on the original bill, to which they were not parties, is well taken and is and the same is sustained.

The 4th exception, as to the deposition of S. F. Ewald, is sustained, and said deposition is suppressed.

As to the fifth exception, with reference to the deposition of Mrs. Nannie L. Wadley, the court is of opinion, and so decrees, that the action of the commissioner in excluding said deposition was proper, but said exception is sustained upon the ground of surprise. The defendant should have been notified by the commissioner of his determination to exclude said deposition, in order to have had time to supply the place of the testimony excluded.

The court deems it unnecessary to pass at this time upon the other exceptions to said report filed by the defendants, as they relate to

matters on which the commissioner will have to report, when the report is recommitted to him.

And the said report is recommitted to Commissioner Gray, who will take and state said account in accordance to the last decree of reference in this cause and report his proceedings to this court as speedily as practicable.

The defendants, H. G. Wadley and Nannie L. Wadley, J. Hal. Gibbonny, H. J. Heuser, Mary A. Heuser, and J. B. Barrett, except to the action of the court in overruling exception No. 1, and also in holding Mrs. Wadley an incompetent witness under the 5th exception.

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EXHIBIT "C."

Decree. Filed August 6, 1896.

In the Circuit Court of the United States for the Western District of Virginia, at Abingdon.

H. G. WADLEY, Plaintiff,	} In Equity, with Injunction.
<i>vs.</i>	
BLOUNT & BOYNTON <i>et als.</i>	

This day came H. G. Wadley, by his counsel, Messrs. D. F. Bailey, Joseph C. Wisor, and Blair & Blair, and presented his petition in the above cause, which was duly supported by the affidavits of said H. G. Wadley and by the exhibits referred to in said petition, and they asked leave, which is hereby granted, that said petition be filed in this equity cause, and it appearing from said petition, said affidavit, and the exhibits filed with said petition, and which are duly certified, that by a decree of this court entered in the above-named equity cause in the chancery order book, at Abingdon, on 31st January, 1895, that this court, upon a bill of injunction and exhibits, answers and exhibits, depositions of witnesses, with exhibits and argument of counsel, upon a motion to dissolve the said injunction, refused to dissolve said injunction, but continued it in force and fully sustained the allegations of said bill, and especially enjoined and prohibited the defendants therein, all of whom are made party defendants to this petition, from all further prosecution of the said H. G. Wadley upon an indictment against him for the embezzlement of the assets of the Wytheville Insurance and Banking Company, pending in the county court of Wythe county, Virginia, this court holding that it had prior jurisdiction of all of the said parties and of the subject-matter set up in said indictment, and to which said bill all the creditors hereinafter named and J. L. Gleaves, the then attorney for the Commonwealth of Wythe county, Virginia, were parties defendant and appeared in and defended said cause; and it appearing from said petition, exhibits, and affidavits that a copy of said injunction was duly executed on all of them by the deputy marshal of said court, and that after the service of said decree upon them, expressly in terms, forbidding all further prosecution of said indictment against said H. G. Wadley in the county

court of Wythe county, Virginia, that the said creditors, by their special counsel, and the said J. L. Gleaves, then attorney for the Commonwealth, acting before July 1st, 1895, and his successor after 1st July, 1895, Robert Sayers, the present Commonwealth's attorney of said county, have persisted and continued to have the said indictment of Commonwealth *vs.* H. G. Wadley called up in said county court from term to term or time to time and have asked the court to enter orders in said cause to commit to the county jail in said county the said H. G. Wadley unless he would give bail with sureties conditioned for his appearance from term to term or time to time, over and against the protest of the said H. G. Wadley and his counsel; and it appearing to the court that by the action and the motion of the said creditors, by their counsel, and the said Robert Sayers, attorney for the Commonwealth, that the said H. G. Wadley, in order to avoid being committed to the county jail of Wythe county in said case, has, at the instance of said creditors and their special counsel and the said R. Sayers, Comm.'s att'y, been admitted to bail upon a bond in the penalty of \$10,000.00, with V. C. Huff and Clarence Trinkle as his bailsmen, conditioned for the personal appearance of the said Wadley on the 10th day of August, 1896, before the said county court of Wythe county to answer said indictment in said county court, which proceeding the said H. G. Wadley by his petition claims to be a deprivation of his personal liberty, and that it is in violation and in contempt of the said decree of this court entered on the 31st January, 1895, in above cause of H. G. Wadley *vs.* Blount & Boynton *et al.*, and the petition stating repeated and continued proceedings against said Wadley for said bail or commitment in violation of his rights as a citizen of the United States, as well as in contempt of this court:

Now, upon the motion of said Wadley, by his counsel, the
54 said creditors and their said counsel, and J. A. Walker and C. B. Thomas, as special prosecutors, and Robert Sayers, the Commonwealth's attorney of Wythe county, Virginia, their agents and attorneys, or any one for them, or in any —, directly or indirectly, are hereby especially forbidden and enjoined in the future from exacting from the said H. G. Wadley any further bail or from asking or taking any further orders in the said case of Commonwealth *versus* H. G. Wadley, pending in the county court of Wythe county, Virginia, except a mere order of continuance, until the further order of this court; and upon the further motion of the said H. G. Wadley rules are hereby awarded against each of said creditors and their said counsel and the said special prosecutors and the said Commonwealth's attorney, Robert Sayers, returnable to the first day of October term, 1896, before this court, at Abingdon, Va., to show cause, if any they can, why they should not be fined or imprisoned, or both, for their violation of the decree of this court of the 31st January, 1895, in the cause of H. G. Wadley *versus* Blount & Boynton *et als.*, by failing to abstain from all further prosecution of said case, according to the mandate of said decree, and a copy of this order may be served upon said creditors in person or upon their counsel of record at the election of the said H. G. Wadley, and upon

said counsel and special prosecutors and the said Commonwealth's attorney in person; and the creditors in said petition enjoined and restrained by this order and said counsel and special prosecutors and said Commonwealth's attorney made parties to said petition and embraced in this order are as follows:

William M. Blount & Wm. Boynton, partners, trading under firm and style of Blount & Boynton, Bainbridge, Ga.; F. A. Seighardt, of State of New York; Mrs. Kate Nettles, Munroe, La.; Jas. R. & W. R. Sergeant, partners under firm name and style of Sergeant Bros., New Jersey; Sam'l Tieger, New York; C. G. Fargo, Hot Spring, S. Dk.; American Bis. & Mfg. Co., Chicago; The Desha Bank of Arkansas, Arkansas City; The Batesville Flouring Mill & Mfg. Co. of Arkansas; The Nefeld Mfg. Co. and N. Neufeld, of Illinois; Amanda J. King, of Florence, S. C.; A. M. & J. M. Jordan, partners under the name and style of Jordan Bros., Hitson's P. O., S. C.; H. S. Shephard, of South Carolina; J. P. M. Cox, Greenville, S. C.; W. N. Gray, of Philadelphia, S. C.; J. S. Vaughan, Winchester, Tenn.; T. A. Windle, Allisonia, Va.; Roanoke Min'l Wool Co., Roanoke, Va.; B. G. Chandos, adm'r, Oshkosh, Wis.; J. J. & W. B. Du Bose, partners under style of J. J. & W. B. Du Bose, of Florence, S. C.; Paschal P. Pratt, of Buffalo, N. Y.; J. W. Kiester, Va.; The Block Company, Pocahontas, Va.; Andy Johnson, Loudon, Ky.; The Hall & Hayward Company, Louisville, Ky.; M. C. & J. W. Pink, partners under firm — of M. C. Pink & Co., Md.; D. H. Stevenson & J. D. Alexander, partners under firm name of Stevenson, Alexander & Co., Md.; W. T. Carter, trading under firm name and style of W. T. Carter & Co., Stafford, Ala.; Silas Kilbourne and A. D. Fessender, partners under style of Silas Kilbourne & Co., Mich.; A. G. Bates, Mich.; P. B. Kushborth and Geo. J. Kushborth, partners under firm name of Kushborth & Son, who sue for the benefit of Edward and Geo. Hollanders, partners under firm name of Chas. Hollander & Sons, residents of Maryland; Paper Mill Co., State of Indiana; Chas. Weiseker, who sues for Wm. Moernam, his assignee, residents — St. of N. Y.; W. H. Waddill, Danville, Va.; Lantern Globe Co., Bellaire, O.; J. B. Green, Bachelors' Hall, Va.; J. Crane, Mississippi; A. D. & T. A. Rodefer, partners under name of Rodefer Bros., Bellaire, O.; Theo. A. Liebler & A. J. Mass, partners under style of Liebler & Mass, 12 College Place, N. Y.; Andrew & R. W. A. Jameson, partners under style of A. Jameson & Son, Penn.; Matilda Lampheimer, Fannerville, La.; L. S. Baker, who sues for the benefit of Isaac, Moses, & Weyer S. Halle, partners under name of S. Halle & Sons, Maryland; W. E. Rice, Danville, Va.; John C. Kingston, Buffalo, N. Y.; A. B. and T. J. Walker, Walkersville, S. C.; College Hill Press Brick Works, Missouri; Beatyville Lumber Co., Ky.; Joseph Williams, Jr., Pittsburg, Penn.; W. D. James, Lunenburg, N. C.; D. E. Alexander, Bellwood, N. C.;

55 Mauer Newman & Emil Hart, Illinois; Hiram A. Miller, Humbleton, W. Va.; Mrs. F. S. Cox, Goldsboro, N. C.; W. S. Wells, Ohio; A. S. & G. H. Gatewood, Danville, Va.; B. Broughton, Chase City, Va.; S. Krasnoff, Berrville, S. C.; Meyer, Joseph Jonnasson and J. H. Rothschild, partners under firm name — Meyer,

Jonnasson & Co., 358 Broadway, N. Y. ; J. R. Robertson & Thomas Hall, partners under name of Robertson & Hall, Phila., Penn. ; Chicago Refining Oil Co., Chicago, Ill. ; N. Martin, Chicago, Ill. ; Norwich Shook & Lumber Co., Norwich, Vt. ; Ogdensburg Terminal Co., N. Y. ; Alpheus Hinton, N. C. ; E. Park, N. C. ; Alden Vinegar Co., St. Louis, Mo. ; F. E. Johnson & Jas. B. Sharp, partners under style of Johnson, Sharp & Co., 23 W. 30th St., N. Y. ; Wong Quong and Ah Chow, partners under style of Chong, Kee & Co., N. Y. ; W. H. Baker and H. P. Colvard, Georgia ; Mrs. J. A. Drake, Va. ; J. P. Taylor, Va. ; W. P. Patterson, Va. ; J. D. Pettinger, Va. ; M. B. Shands, trst. and assign. ; S. J. Lankford, Chilhowie, Va. ; E. E. Smith, assign. ; H. Penner, Milwaukee, Wis. ; Adel Pino Bros., Key West, Fla., for Western Nat'l B'k ; R. Kimball, Saginaw, Mich. ; S. D. McMillan, La Crosse, Wis. ; T. L. Richardson, J. O. Howe, and T. M. Lovejoy, partners under firm name of Richardson, Howe & Lovejoy, Boston, Mass. ; Jacob Ferman, Baltimore, Md. ; Ely Doweel Mfg. Co., St. Louis, Mo. ; Art Pub. Co., Gardner, Mass. ; Western Brass Co., St. Louis, Mo. ; Chas. Botcher Lumber Co., Detroit, Mich. ; A. Martin, New Orleans, La. ; W. H. Gooch, by W. D. Blanks, Va. ; Mrs. J. A. Drake, Va. ; J. D. Pettingill, Va. ; V. P. Patterson, Va. ; D. P. Taylor, Va. ; W. D. Ryan and C. K. Maloney, partners under name — Ryan & Maloney, Va. ; Chas. Thompson, Tenn. ; T. R. Spaulding & T. F. Miller, partners under firm name and style of Spaulding, Miller & Co., Mo. ; Wm. A. Pendleton, Ky. ; Thos. G. Hanley, Va. ; M. L. & Wm. Bowlin, partners under firm name of M. L. Bowlin & Co., Ind. ; W. H. White, Ga. ; J. B. Bagby, Chase City, Va. ; F. G. Dolan & C. F. Miller, partners under firm — and style — Dolan & Miller, Brooklyn, N. Y. ; Lizzie Schnitzen & J. Gay, partners under firm name and style of L. Schnitzen & Co., Mo., and their counsel of record, C. B. Thomas and G. J. Holbrook, of firm of Holbrook & Thomas ; J. A. Walker & M. M. Caldwell, of firm of Walker & Caldwell ; W. S. Poage, W. L. Stanley, R. Crockett, Sr., and R. Crockett, Jr., as Crockett & Crockett ; A. A. Campbell, J. J. A. Powell, and W. B. Kegley ; Peyton Gray, B. F. Buchanan, J. L. Kelly, Rockingham Paul, J. E. Moore, and C. B. Thomas and J. A. Walker, special prosecutors, and Robert Sayers, prosecuting attorney for Wythe county, Va.

And it is ordered that the service of copies of this decree upon the counsel aforesaid shall be equivalent to personal service upon said creditors, and that copies thereof be served upon the other defendants.

CHARLES H. SIMONTON,

Circuit Judge.

Aug. 5, 1896.

To the clerk of the circuit court of the United States, Abingdon.

The foregoing is a true copy from the order book of this court.

Witness my hand and the seal of the court this the 7th day of August, 1896.

[Seal United States Circuit Court, Western District of Virginia.]

I. C. FOWLER, *Clerk.*

56

Petition for Appeal.

Filed Octo. 8th, 1896.

In the Circuit Court of the United States for the Western District,
at Abingdon.

Ex Parte: H. G. WADLEY.

Petition for writ of *habeas corpus*; petition for appeal.

To the Honorable Melville W. Fuller, Chief Justice of the United States, and associate justices of the Supreme Court of the United States, at Washington, D. C.:

Your petitioner, I. R. Harkrader, who is the duly elected and legally qualified sheriff for the county of Wythe, in the Commonwealth of Virginia, and under the laws of said State keeper of the public jail in said county, respectfully represents to your honorable

court that the said Commonwealth of Virginia, in the office
57 and person of your petitioner, has been grievously wronged by a certain order and decree made on the 14th day of August, 1896, by Judge Chas. H. Simonton in the matter of H. G.

Wadley's petition for writ of *habeas corpus*, by which decree and order said Wadley, at that time, to wit, August 14th, 1896, and theretofore in the lawful custody of your petitioner as keeper of the public jail in the county of Wythe, was taken from and out of petitioner's control and custody; and from said order and decree petitioner prays an appeal to your high and honorable court for reasons set out and specified in his assignment of errors, which petitioner files herewith, and further prays that a transcript of the record and

proceedings wherein said order and decree was made, properly authenticated, may be sent to your honorable court, at
58 Washington, D. C.

I. R. HARKRADER,

Sheriff and Keeper of Wythe County Jail, Virginia.

R. TAYLOR SCOTT,

Attorney General of Virginia and Counsel for Petitioner.

Sept. 23, 1896.

The prayer of this petitioner allowed.

CHARLES H. SIMONTON,

Circuit Judge.

12 Octo., 1896.

Assignments of Errors.

Filed Octo. 8th, 1896.

59

First.

Because under the Constitution and laws of the United States the circuit court of the United States for the western district of

Virginia had not jurisdiction over the matter set out in the petition of H. G. Wadley for the writ of *habeas corpus*, and therefore the order and decree made by said court August 14th, 1896, is void.

Second.

Because in the prosecution for embezzlement pending in the county court of Wythe county, Virginia, styled "Commonwealth of Virginia v. H. G. Wadley," no Federal question was involved; therefore its order made August 10th, 1896, cannot be reviewed, amended, altered, or annulled by the United States circuit court for the western district of Virginia.

Third.

60 Because the order of the judge of Wythe county court entered on its record August 10th, 1896, was the proper exercise of the authority and jurisdiction conferred upon said court by the constitution and laws of the Commonwealth of Virginia, and if by that order H. G. Wadley was wronged he could then appeal to the circuit court of Wythe county and through that tribunal to the court of last resort in the Commonwealth of Virginia, the supreme court of appeals.

It is horn-book law that the writ of *habeas corpus* cannot be invoked when right of appeal is allowed.

Fourth.

Because H. G. Wadley when he presented his petition for injunction, which was granted by Judge Nathan Goff, was allowed
61 to make J. L. Gleaves, then attorney for the Commonwealth for the county of Wythe, a defendant, and to have process awarded against said State officer.

Fifth.

Because H. G. Wadley when he presented his petition for injunction, which was granted by Judge Charles H. Simonton, was allowed to make Robert Sayres, Jr., who succeeded J. L. Gleaves, and was then attorney for the Commonwealth for Wythe county, a defendant, and to have process awarded against said officer.

Wherefore the said petitioner, sheriff, &c., as aforesaid, prays that said order and decree be reversed, and that your honorable court enter a decree and order remanding H. G. Wadley to your petitioner's custody, to be dealt with according to the laws of the Commonwealth of Virginia.

62

R. TAYLOR SCOTT,

Attorney General of Virginia and Counsel for Petitioner.

Richmond, Va., Sept. 24th, 1895.

Bond. Filed Octo. 12, 1896.

63 & 64 Circuit Court of the United States of America, Western
District of Virginia.

— — — — — }
vs. }
— — — — — }

Know all men by these presents that we, R. Taylor Scott, principal, and E. S. Turner, securities, are held and bound unto H. G. Wadley in the sum of two hundred and fifty dollars; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 8th day of October, A. D. 1896.

The condition of the above obligation is such that whereas a petition for *habeas corpus* has been instituted in the circuit court of the United States of America for the western district of Virginia, at Abingdon, Virginia, by H. G. Wadley, complainant, against I. R. Harkrader, sheriff and keeper of Wythe county jail, Va., defendant, and a decree having been entered against the said I. R. Harkrader, sheriff, &c., and the said I. R. Harkrader, sheriff, &c., having obtained an appeal and filed a copy thereof in the clerk's office of said court, at Abingdon, to reverse the said decree in said suit, and a citation directed to H. G. Wadley, citing and admonishing him to be and appear at the United States Supreme Court of the U. S., to be holden at Washington, D. C., on the day in the said citation mentioned:

Now, therefore, if the complainant shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

R. TAYLOR SCOTT. [SEAL.]
E. S. TURNER. [SEAL.]

Sealed and delivered in the presence of—

JOHN R. TURNER.

H. D. TURNER.

Approved by—

CHARLES H. SIMONTON,

Circuit Judge.

Order to Transmit Record.

And thereupon it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with

all things thereunto relating, be transmitted to the said Supreme Court of the United States, Washington, D. C.

And the same is transmitted accordingly.

[Seal United States Circuit Court, Western District of Virginia.]

I. C. FOWLER, *Clerk*,
Per STUART F. LINDSEY, *D. C.*

Clerk's Certificate.

UNITED STATES OF AMERICA, }
Western District of Virginia, in the Fourth Circuit. }

I, I. C. Fowler, clerk of the circuit court of the United
66 States for the western district of Virginia, in the fourth circuit, at Abingdon, do hereby certify that the foregoing is a true, full, and complete transcript of the record and proceedings had in said court, in the matter of H. G. Wadley's application for a writ of *habeas corpus*, directed to I. R. Harkrader, sheriff and keeper of Wythe county jail, Virginia, as the same remains of record and on file in said office, made for transmission to the Supreme Court of the United States, at Washington, D. C.

Witness my hand and seal of the said circuit court of the United States for the western district of Virginia, in the fourth circuit, at Abingdon, affixed hereunto this 20 day of October, A. D. 1896, and of our Independence of the said United States the 121st year.

[Seal United States Circuit Court, Western District of Virginia.]

I. C. FOWLER, *Clerk*,
Pr STUART F. LINDSEY, *D. C.*

67 UNITED STATES OF AMERICA, ss :

The President of the United States to H. G. Wadley, Greeting :

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the 21st December, 1896, pursuant to an appeal from a decree of the circuit court of the United States for the western district of Virginia, in the fourth circuit, at Abingdon, in your favor, passed in a cause in said court wherein I. R. Harkrader, sheriff and keeper of Wythe county jail, Va., is respondent, &c., and you are petitioner *ex parte habeas corpus*, to show cause, if any there be, why the decree rendered, against the said I. R. Harkrader, sheriff, &c., in said cause mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court of the United States, this 23rd day of November, in the year of our Lord one thousand eight hundred and ninety-6.

CHARLES H. SIMONTON,

Circuit Judge.

68 On this 15th day of December, in the year of our Lord one thousand eight hundred and ninety-six, personally appeared

— before me, the subscriber, H. R. Levi, office deputy marshal, for G. W. Levi, U. S. marshal for the western district of Va., and makes oath ~~the~~ he delivered a true copy of the within citation to Jno. Blair, member of the firm of Blair & Blair, attorneys, at Wytheville, Va., who acknowledged himself as the attorneys for H. G. Wadley.

Sworn to and subscribed the 15th day of December, 1896.

WYATT M. ELLIOTT,
Clerk U. S. Courts at Lynchburg.

Executed Dec. 13th, 1896, by serving a true copy of the within on Jno. Blair, attorney for H. G. Wadley, in person.

H. R. LEVI,
Office Deputy Marshal.

39 UNITED STATES OF AMERICA, 88 :

The President of the United States to H. G. Wadley, Greeting :

You are hereby cited and admonished to be and appear at Supreme Court of the United States, to be holden at Washington, D. C., on the 21st December, 1896, pursuant to an appeal from a decree of the circuit court of the United States for the western district of Virginia, in the fourth circuit, at Abingdon, in your favor, passed in a cause in said court wherein I. R. Harkrader, sheriff and keeper of Wythe county jail, Va., is respondent, and you are petitioner *ex parte habeas corpus*, to show cause, if any there be, why the decree rendered against the said I. R. Harkrader, sheriff, &c., as in said cause mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court of the United States, this 23rd day of November, in the year of our Lord one thousand eight hundred and ninety-6.

CHARLES H. SIMONTON,
Circuit Judge.

70 [Endorsed:] # 13, civil. Received Dec. 11th, 1896. Executed Dec. 11th, 1896, by reading the within to H. G. Wadley, at Wilmington, N. C. O. J. Carroll, United States marshal; T. O. Bunting, deputy marshal. Marshal's fee, \$2.00.

Endorsed on cover: Case No. 16,457. Virginia, western district, C. C. U. S. Term No., 678. I. R. Harkrader, sheriff and keeper of Wythe county jail, Virginia, appellant, vs. H. G. Wadley. Filed December 26, 1896.